

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1278

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellant

v.

THE MERCHANT DIAMOND GROUP, INC.,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

APPENDIX

RICHARD J. ARCARA,
United States Attorney,
Western District of New York.

Vol. I
LLOYD GEORGE PARRY,
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Washington, D.C. 20530.

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SECRET

D. C. Form No. 100 Rev.

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DATE	PROCEEDINGS
4/21/77	Filed Order sealing for a period of 60 days applications and/or affidavits for the search and seizure warrant issued on 4/13/77 for the premises known as The Merchant Diamond Group, etc. Curtin, J. (Application sealed).
4/21/77	Filed Search Warrant with return for The Merchant Diamond Group, Inc. etc. (Affidavit sealed).
4/21/77	Filed Order (Search Warrant) for bank records and accounts pertaining to Merchant Diamond Group, Inc. authorized by Judge Hefferon, Co. Court Judge. (2 affidavits sealed).
4/21/77	Order (Search Warrant) for parcels, deposited in U.S. Mail by Merchant Diamond Group, Inc. Curtin, J. (Application & affidavit sealed).
4/21/77	Application & Order freezing bank accounts of Merchant Diamond Group, Inc. Curtin, J. (Affidavit sealed).
4/21/77	Search Warrant for safe deposit box #123 Statler Hilton Office Marine Midland Bank. Curtin, J. (Affidavits sealed).
4/21/77	Straxxxxxxxx Filed Order directing to seal and hold under seal for a period of sixty days the affidavits submitted for the search and seizure warrant issued by the Hon. William G. Hefferon,

DATE	PROCEEDINGS
1977	Erie County Court, dated April 15, 1977 for bank accounts and records pertaining to the Merchant Diamond Group, Inc., Curtin, J.
Apr. 20	Application & order sealing for 60 days the affidavits sub. for search and seizure warrant issued by Hon. William J. Heffron, judge of Erie County Court for bank accounts and records pertaining to Merchant Diamond Group, Inc. Appearances: Lloyd Geo. Perry, Esq. for the Govt., Thomas Segalla, Esq. Merchant Group. Robert Stephenson, Esq. Thomas Anruschat, Adrian Weissfeld, Esq., and Harold Boreanaz, Esq. for indivi.
Apr. 22	Filed Notice of Motion returnable 4/25/77 for an order permitting inspection, examination and make copies of any and all documents, affidavits, other materials and testimony constituting the application or applications for certain search warrants and orders issued by this Ct. and Co. Court, and for an order vacating the order of this ct. dtd 4/20/77, which order sealed all such documents, affidavits, etc.
Apr. 27	Filed Memorandum of Law in Support of the sealing order of this court dated April 20, 1977.
Apr. 25	Motion for an order of inspection. Adj. to April 27 at which time Govt. is to file a memo.
Apr. 28	Filed Order unsealing all papers previously sealed. Curtin, J.
Apr. 28	Filed Affidavit for Search Warrant.
May 13	Filed Application & Order, ELFVIN, J. (Ordered that Marine Midland continue to freeze accounts)
June 8	Filed Order to Show Cause returnable 6/10/77 why an Order should not be entered pursuant to Rule 41(e) of the FRCP returning the property of the Merchant Diamond Group, Inc. (Filed by Saperston, Day & Radler).
June 10	Filed Govt's Answer to MDG's Show Cause Ord. of June 8, 1977.
June 10	Filed Saperston, Day & Radler's Memorandum of Law in Support of Motion for the Return of Seized Property.
June 10	Oral argument on application for return of seized property pursuant to Rule 41(e) FRCP. Ct. extends the freeze on the asset of the deft. until June 17. Ct. sets a hearing on the issue for June 15 at 2:00 pm.
June 15	Oral argument on motion by deft. for return of property. Hearing adj. to June 20 at 2:00 pm. Witnesses for the deft.: Clay Powell, Theresa Dinino.
June 17	Filed Application & Order that Marine Midland Bk. continue to freeze accts. numbered 756-75037-7 & 756-75044-0, etc. CURTIN, J.
June 20	Hearing continues fr June 15 w/the same appearances. Witnesses for the Govt.: Saul Morton Eroomkia. Hearing adj. until tomorrow morning at 10:00 am.
June 21	Hearing continued fr yesterday w/the same appearances. Witnesses for the deft.: Gary Grelick, Ronald Lee Snyder. Hearing adj. to tomorrow morning at 11:00 am.

CRIMINAL DOCKET

Sheet No. 2

19, C. 199

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

Misc. Crim. No. ~~214~~ 214

MERCHANT DIAMOND GROUP, INC.

A motion has been made by petitioner, Merchant Diamond Group, Inc., pursuant to Rule 41(e) for the return of property unlawfully seized by the United States of America, and for an order vacating orders of this court freezing the bank accounts of Merchant Diamond Group, Inc. The court has heard evidence on this application and argument of counsel. I find that the petitioner is entitled to the relief requested. A decision setting forth findings of fact and conclusions of law shall be filed on Monday, June 27, 1977 and made part of the record. In the meantime, it is hereby

ORDERED that all property of Merchant Diamond Group, Inc. seized by the United States of America pursuant to search and seizure warrants issued by this court and by the County Court of Erie County be returned forthwith to

petitioner, Merchant Diamond Group, Inc.; and it is further

ORDERED that this court's order of April 13, 1977 and all subsequent orders thereof relating to the freezing of all bank accounts of petitioner, Merchant Diamond Group, Inc., be and hereby are vacated and the Marine Midland Bank is hereby ordered to release any and all such bank accounts to petitioner, Merchant Diamond Group, Inc., or its counsel.

On June 23, 1977 after this order was granted, the Government applied for a stay under Rule 8(a) of the Federal Rules of Appellate Procedure. This order is therefore stayed until June 28, 1977 at 5:00 p.m. Any further application must be made to the United States Court of Appeals for the Second Circuit.


JOHN T. CURTIN
United States District Judge

DATED: June 23, 1977

005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-75-

Misc. Crim. No. 214

MERCHANT DIAMOND GROUP, INC.

APPEARANCES: RICHARD J. ARCARA, ESQ.
United States Attorney
(LLOYD GEORGE PARRY, ESQ., Department of
Justice Attorney, of Counsel), Buffalo,
New York, for the Government.

SAPERSTON, DAY & RADLER
(WARREN S. RADLER, ESQ. and BRIAN P.
FITZGERALD, ESQ., of Counsel), Buffalo,
New York, for Merchant Diamond Group, Inc.

On April 13, 1977, a search warrant was issued by this court for the premises at 1629 Statler Hilton Hotel, Buffalo, New York, in which the petitioner in this proceeding, the Merchant Diamond Group, Inc. [MDG], maintained an office for the conduct of business. I had issued the warrant on the basis of an affidavit subscribed to by Postal Inspector Ronald L. Snyder.

When the warrant was executed on April 14, 1977, a large number of documents and records belonging to MDG

were seized by the postal inspector, for which a return has been filed with the court. Contemporaneously, another warrant was issued authorizing the postal inspector to seize packages containing diamonds delivered to the Niagara Square Postal Station in Buffalo, New York. This warrant was also executed on the 14th of April and four packages containing diamonds were seized.

On April 14, 1977, a warrant was issued for the search and seizure of contents of a safe deposit box, No. 123, located in the Marine Midland Bank in the name of MDG. In execution of this warrant, a number of diamonds were seized. In addition, on April 14, 1977, I issued an order directing the Marine Midland Bank to freeze the bank accounts of MDG for a period of 30 days. Subsequently, this order has been extended so that the funds are still unavailable to the petitioner.

Finally, on April 15, 1977, in my absence, a warrant was issued by Hon. William G. Heffron, Erie County Court Judge, to enter the Marine Midland Bank to identify all accounts and records relating to accounts of MDG, Inc. In addition, funds were seized from the MDG savings account.

On June 8, 1977, upon the application of the attorneys for the petitioner, I issued an order returnable on June 10, 1977, directing the Government to show cause why an order should not be entered pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure for the return of property to MDG which was seized pursuant to the warrants issued by this court and by Judge Heffron. On June 10, 1977, the Government filed a written response. However, because of the unavailability of counsel and other trials proceeding in the court, it was not possible to begin a hearing on this application until June 15, 1977. The hearing continued on June 20, 21 and 22. The following constitutes the court's findings of fact and conclusions of law on the application of the petitioner pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure.

MDG is a Florida corporation qualified to do business in New York since September 16, 1976. It carries on a business of selling diamonds and maintains an office at Suite 1629 Statler Hilton Hotel, Buffalo, New York. The parent corporation of MDG is Merchant Diamond Group, Ltd., which was incorporated in the Province of Ontario on April

17, 1974. The principal officers of MDG are Gerald Coren, President, and Anthony Lawrence, Vice President. MDG and its related companies are in the business of selling diamonds through telephone solicitations throughout Canada and the United States.

In his application in support of the search warrant, Postal Inspector Ronald L. Snyder stated that he had received information from officers of the Royal Canadian Mounted Police [RCMP], who had been conducting an investigation into the activities of MDG, Ltd. for about two years. Beginning in February, 1977 and continuing through March 31, 1977, the RCMP conducted a court-authorized electronic surveillance of various telephone facilities of MDG in Toronto. During this period, the RCMP intercepted in excess of 1,000 telephone calls and from this concluded that a number of misrepresentations were being made to potential customers throughout the United States and Canada. In addition, Mr. Snyder states in his affidavit that Allen Lindzon, Stanley Harold Bader and Harold Eric Smith, principals in the company, were convicted in May of 1976 in Canada for conspiracy to defraud the public in violation of §423(1)(d) of the

Criminal Code of Canada. According to Mr. Snyder, this conviction resulted from their participation in fraudulent stock sales schemes.

The principal misrepresentations alleged were that the diamonds being offered to the customers would appreciate in value at the rate of 33-60% per year. The RCMP had been advised by Robert Arend, a member of the Gemological Institute of America, that the maximum rate of appreciation of rough diamonds was about 3-9% per year, and that rough diamonds appreciate in value at a faster rate than the finished product offered for sale by MDG. The second principal misrepresentation alleged was that there was a ready market for the resale of diamonds so that the customer could liquidate his diamond holdings at will. According to the Inspector, an analysis had been made of the prices paid for the diamonds offered for sale and that these were about 200% to 300% of the wholesale price paid by MDG. Experts in the field had advised the RCMP that there was no ready market for an individual customer to sell at retail and, if he sold through a wholesale dealer, it had to be at a substantial loss.

The third misrepresentation alleged was that MDG stated that it would buy back at prevailing retail prices any diamonds purchased from it. The RCMP advised the postal inspector that a review of the authorized electronic interceptions revealed that on only ten occasions since February 2, 1977 was a customer permitted to sell back. Further, the RCMP stated that Gerald Doren was heard to tell the manager of MDG's Toronto office that buy-backs of diamonds had to be limited to a maximum of 7% of sales.

The fourth misrepresentation alleged was that appraised value of the diamonds was determined by an independent gemologist, who is a member of the Gemological Institute of America. The RCMP informed Snyder that Theodore J. Caldeira, who was doing the appraisal work for MDG, was not a member of the Gemological Institute and, further, that Mr. Arend is listed as an appraiser on their sales brochure although he has informed the RCMP that he did not lend use of his name to MDG.

Telephone records of the Bell Telephone Company of Canada revealed that a number of calls were made to the Buffalo office of MDG and that a call placed to some numbers

in Buffalo would automatically be relayed to telephones in the Toronto office of the company. From January, 1977 until the end of March, 1977 MDG, Ltd., as a regular course, transported diamonds to the Buffalo office and made the proper declarations of these diamonds with the United States Customs Service.

The MDG sales procedure begins with telephone contact to select persons. If interest is shown, then sales material is mailed to the person. Ten days to two weeks later a second telephone call is made by the MDG salesperson. If the United States customer desires to make a purchase, he sends a check for the purchase price of the diamond package to MDG's Buffalo office. The diamonds are then delivered by mail from Buffalo.

The postal inspectors have seized numerous diamonds, books, records and other property pursuant to the search warrant. Furthermore, the total amount of petitioner's bank accounts, frozen by order of the court, amounts to \$429,993.03. The court has been notified that search warrants were also issued in Toronto and New York City at about the same time the warrants were issued here.

A criminal prosecution has been instituted in Canada where certain arrests have been made, but no arrests have been made in the Western District of New York and no indictment has been filed here to date.

At the time the application was made to me for a search warrant in April, 1977, the Government attorneys represented that the electronic surveillance was conducted in accordance with Canadian law and that the tapes would be available for proceedings in this court. However, on June 23, 1977, Mr. Perry informed the court that the Canadian authorities would not make the tapes available in this court at this time. He was unable to state when the tapes would be available for review.

After listening to the testimony of the witnesses, it appears that the postal inspector's affidavit contains a number of inaccuracies. In order to determine what actually was represented to the customers, the tapes are essential. The inconsistencies in the affidavit, coupled with the failure to produce the tapes, require that this motion be granted.

To determine the admissibility of the tapes in this proceeding, both sides produced witnesses to testify about

the Canadian Invasion of Privacy Act. Section 173.20 of that Act sets forth the procedures which must be followed before disclosure of information may be made after an authorized electronic surveillance has been obtained. Because of the inability of the Government to produce the tapes at this time, it is not necessary to discuss this evidence in detail. It is sufficient to say that there was a difference of opinion between the Canadian attorneys who testified about this section which became effective in 1974. The attorney who was called by the petitioner testified that it is a violation of Canadian law for the RCMP to provide information gained from an electronic surveillance to a United States officer without court authorization. The witness called for the Government gave his opinion that it was permissible for the officer to reveal tape contents as long as the information was given to the postal inspector to obtain assistance in the Canadian investigation. Petitioner's counsel is quick to point out that even if this were the case, there is nothing in Mr. Snyder's application to indicate that the revelations made to him were made for the purpose of assisting the Canadian officers

In their investigation.

As I have already stated, petitioner has established a number of inconsistencies and inaccuracies in the affidavit submitted by the postal inspector. On page 2 of his affidavit, he alleged that it was a misrepresentation for MDG salesmen to represent that the diamonds offered would appreciate in value at the rate of 33% to 60% per year. During the hearing, the petitioner submitted invoices from its suppliers to show that in the period from September, 1976 through March, 1977, the diamonds purchased by the petitioner appreciated at a rate of 15-37% depending upon the size of the stone. This evidence was not refuted by the Government. In fact, it was supported by Robert Arend, the diamond expert called by the Government, who explained that there had been a phenomenal increase in the value of diamonds in the last year and that the records of MDG purchases and sales were not out of line with the experience in the industry generally. The RCMP also advised the postal inspector that Mr. Arend had told them that rough diamonds increased in value at a rate of 8-9% per year, and that this was greater than the rate of

appreciation of cut and polished diamonds which were being sold by MDG. In fact, he testified that the RCMP misunderstood his statement since his industry experience was actually that cut and polished diamonds appreciated at a rate faster than rough diamonds.

On the allegation that it was a misrepresentation to claim the existence of a ready market for the resale of diamonds, expert testimony was presented. While Mr. Arend agreed with the Government that it would be quite difficult for a purchaser to immediately resell a diamond purchased from MDG without taking a substantial loss, he nevertheless testified that the amount of the purchase price was about the same as if the purchaser bought the diamond at retail. As a wholesaler in the diamond business, Mr. Arend appeared to be concerned with the impact of the sales techniques used by MDG in the business itself. He believed that the representation made to a customer, that he would be able to resell the diamonds readily without loss, was a dangerous precedent because usually when a person bought a diamond at retail and attempted to sell it immediately back to a merchant, he could get only about 20 to 25% of the

selling price. He believed that a number of people would become disenchanted with diamonds when they were not able to resell them as an investment.

This concern should be considered along with the alleged misrepresentation that MDG would buy back at prevailing retail prices any diamonds purchased from it. The RCMP had advised the postal inspector that in their review of the 1,000 conversations they had listened to since February 2, they could only discover ten instances when buy-backs of the diamonds were successful. During the hearing, the petitioner presented evidence from its own records which indicated that there are at least 42 occasions in which customers were able to resell diamonds to the MDG at the price they originally paid. In some instances the purchaser in fact received more than they had paid, and in a few others a bit less. This evidence was unrefuted by the Government.

In the affidavit the Government alleged that the petitioner had improperly used the name of Robert Arend in its promotional literature. Mr. Arend testified that it was not until about April 7, 1977 that he notified petitioner

that he no longer wished to have his name utilized in their sales promotion. The application for a search warrant was made on April 13, 1977.

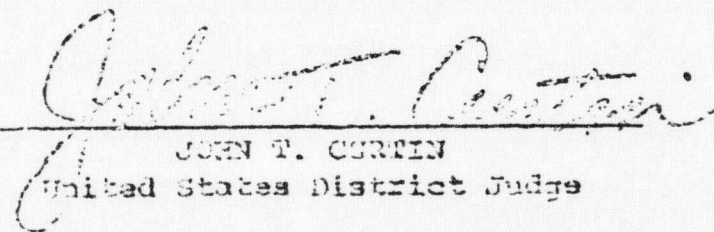
It should further be noted that Mr. Arend testified to the quality of the diamonds sold by MDG. On three occasions he traveled to Antwerp to purchase diamonds for MDG. He stated that all diamonds which he purchased for them were of high quality, VVS₁ or better. As far as he could tell, the representations made by MDG concerning the quality of their diamonds were accurate. No proof has been submitted to contradict this conclusion.

The foregoing findings of fact lead inevitably to the conclusion that the affidavit of the postal inspector upon which the warrants were issued cannot establish the probable cause needed to uphold the search and seizure order under Rule 41(e). See generally SA MOORE'S FEDERAL PRACTICE §41.09[3]. The burden of proof rests upon petitioner to prove that the search and seizure were invalid. 3 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE §675 at 127 n.77. It succeeded in establishing a number of material inaccuracies in the postal inspector's affidavit, thus

shifting the burden back to the Government. Without the ability to review the RCMP tape, I cannot find sufficient basis to refute the petitioner's evidence and to establish probable cause of MDG's fraud upon customers in the United States. Therefore, all the property seized by the Government, including records and bank accounts must be returned to petitioner. These findings and conclusions form the basis for my order of June 23, 1977.

In addition, on June 23, 1977 the Government made an oral application before the court for the appointment of a receiver to govern the redistribution of the seized MDG accounts in order to protect the interests of customers who had already paid for diamonds. However, the Government has cited no authority for the court to make such an appointment in a criminal matter. Therefore, the Government application is denied.

So ordered.


JOHN T. CURTIN
United States District Judge

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DATED: June 27, 1977

United States District Court FOR THE

FILED

APR 21 1977

T. J. CURTIN, Clerk

Docket No.

Case No.

UNITED STATES OF AMERICA

The Merchant Diamond Group, Inc.
Suite 1629 Statler Hilton Hotel
Delaware Avenue
New York 14202

AFFIDAVIT FOR SEARCH WARRANT

BEFORE me, T. Curtin, U.S. District Court for Western District
of New York, Buffalo, New York
The undersigned being duly sworn deposes and says:

That he has reason to believe that ~~(on the person of)~~
(on the premises known as)
The Merchant Diamond Group, Inc.
Suite 1629 Statler Hilton Hotel
107 Delaware Avenue
Buffalo, New York 14202

in the Western

District of New York

there is now being concealed certain property, namely

here describe property

business, personnel and financial records; lists of customers' names
and related records and correspondence; payments from customers and
related banking records; telephone equipment and records of telephone
billings and related matters; records of mailings; corporate and
business documents; merchandise on hand; promotional literature,

which are

evidence, fruits, and instrumentalities of the violations of
18 U.S.C. §1341, §1343 and §371 by Gerald Doren and others,

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant
are as follows:

are set forth in the attached affidavit of Ronald L. Snyder dated
this date, marked Exhibit "a", and incorporated herein by reference

Ronald L. Snyder
United States Postal Inspector
Signature of Affiant
Official Title, if any.

Sworn to before me, and subscribed in my presence, April 13, 1977

T. Curtin
Judge or Federal Magistrate

United States Judge or Judge of a State Court of Record

If a search is to be authorized "at any time in the day or night" pursuant to Rule 41(c), show reasonable cause therefor.

If the warrant is to authorize execution pursuant to 21 U.S.C. § 879 without prior notice of authority or purpose, indicate the circumstances creating the need for such a warrant.

FD-106 (Rev. 7-73)

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A F F I D A V I T

Ronald L. Snyder, being duly sworn according to law, deposes and states the following:

Since April 1971, he has been a United States Postal Inspector assigned to the investigation of violations of Title 18, United States Code, Section 1341 (Mail Fraud) and related statutes, and since August 1976 he has been so assigned to the Buffalo Domicile of the United States Postal Service.

On April 5, 1977, he commenced an investigation into certain alleged violations of the mail fraud (18 U.S.C. §1341), fraud by wire (18 U.S.C. §1343) and conspiracy (18 U.S.C. §371) statutes by various individuals doing business as Merchant Diamond Group, Inc., Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York, 14202. As a result of that investigation, he is familiar with the following facts and circumstances:

SOURCES OF INFORMATION

On April 5 and April 7, 1977, Inspector Snyder met with Corporal Ross Kossatz, Commerical Crimes Section, Royal Canadian Mounted Police (RCMP), Toronto, Ontario, Canada. During those meetings, Cpl. Kossatz officially advised that for approximately the last two years the RCMP has been conducting an investigation of the retail diamond investment business in Toronto. (In addition to the investigative techniques traditionally utilized in a fraud investigation of this sort, during the period of February 2 through March 31, 1977, the RCMP has conducted court authorized electronic surveillance of various telephone facilities in Toronto.) As a result, the RCMP has determined that on April 17, 1974 the Merchant Diamond Group, Ltd., (Merchant, Ltd.) Suite 901-903, 111 Richmond Street West, Toronto, Ontario was incorporated. The president of this company is one

Gerald Doren. Other principals and participants in the company are Allen Lindzon, Stanley Harold Bader, and Harold Eric Smith. (Lindzon, Bader and Smith were convicted in May of 1976 of Conspiracy to Defraud the Public in violation of Section 423(1)(d) of the Criminal Code of Canada. This conviction resulted from their planning and participation in a fraudulent stock sales scheme.) These individuals and approximately 35 other persons have been and are conducting a telephone sales campaign whereby thousands of Canadian and United States citizens have been fraudulently induced to purchase diamonds as an investment commodity from Merchant, Ltd.

The RCMP advises that the scheme involves the purchase by Merchant, Ltd. of cut and polished diamonds of widely varying quality at wholesale prices. These diamonds are in turn sold at retail prices to customers throughout the United States and Canada. These diamonds are sold as the result of multiple misrepresentations by Merchant, Ltd.'s salesmen. During the aforementioned court authorized electronic surveillance conducted from February 2 through March 31, 1977, the RCMP intercepted in excess of 1000 telephone calls whereby Merchant, Ltd. salesmen have made the following misrepresentations to potential customers:

1. The diamonds being offered to the customer will, based on past performance, appreciate in value at the rate of 33% to 60% per year. The RCMP has been advised by Mr. Robert Arend, a member of the Gemological Institute of America and a recognized expert in the field of gemology, that the value of diamonds as a commodity has had a maximum rate of appreciation in recent years of between approximately 8% to 9% per year. Moreover, this rate of appreciation applies to raw uncut diamonds which appreciate in value at a faster rate than the cut and polished diamonds being offered for sale by Merchant, Ltd.

2. There is a ready market for the resale of diamonds so that the customer may liquidate his diamond holdings at will. The RCMP advises that it has contacted numerous experts in gemology, diamond importing and related fields and that according to these experts no retail market exists for the re-sale of diamonds and, further, that the only ready market for diamonds is at the wholesale level. As stated above, Merchant, Ltd. sells cut and polished diamonds to its customers at retail prices. These retail prices vary from 200% to 300% of the wholesale price paid by Merchant, Ltd. Accordingly, unless a customer is willing to sell his diamonds on the wholesale market and take a substantial financial loss on his investment, he has no ready market in which he can dispose of his diamonds. Moreover, on March 14, 1977, Gerald Doren, president of Merchant, Ltd. was electronically intercepted telling the attorney for one of Merchant, Ltd.'s disgruntled customers that unless Merchant, Ltd. was willing to buy back the customer's diamonds, the customer would be forced to sell his diamonds on the wholesale market at considerable loss. This conversation evidences Doren's awareness that the above representation that a ready market exists for the re-sale of diamonds is false and misleading when it is made in the context of such a market existing at retail prices.

3. Merchant, Ltd. will buy back at prevailing retail prices any diamonds purchased from it. The RCMP advises that a complete review of the aforementioned court authorized electronic interceptions discloses that in the vast majority of instances where customers have sought a buy-back of their diamonds, Merchant, Ltd. has failed to do so. Merchant, Ltd. has bought back diamonds on only ten occasions since electronic surveillance was initiated on February 2, 1977. In the majority of these instances Merchant, Ltd. bought back only a portion

of the customer's diamond holdings and then, proceeded to sell even more diamonds to the same customer. Moreover, on March 21, 1977, Gerald Doren was electronically intercepted telling the manager of Merchant, Ltd.'s Toronto office that buy-backs of diamonds must be limited to a maximum of 7% of sales. In other words, while a buy-back is promised in 100% of sales, the actual policy as enunciated by Doren is that it will be available in only 7% of all sales.

4. The appraised value of the diamonds sold to the customer will be determined by an independant gemologist who is a member of the Gemological Institute of America. The appraiser for Merchant, Ltd. is one Theodore J. Calderia d/b/a Die Cut Diamonds, 9 Richmond Street East, Toronto, Ontario. A check of the records of the Gemological Institute of America (GIA) indicates that Mr. Calderia is not listed as a member. Moreover, in the sales brochure mailed by Merchant, Ltd. to potential customers (the mailings are more fully described below), Mr. Robert Arend of the GIA is listed as the appraiser for Merchant, Ltd. While Mr. Arend, a widely recognized expert, is a member of the GIA, he has advised the RCMP that he has refused to serve as Merchant, Ltd.'s appraiser and that the appearance of his name in that company's sales brochure is unauthorized and misleading.

United States customers who agree to make purchases are instructed by the Merchant, Ltd. salesmen to send their payment to Merchant Diamond Group, Inc. (Merchant, Inc.) Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York 14202.

A check of the records of the Erie County New York Clerk's Office shows that on September 16, 1976, Merchant, Inc. filed its application for authority to do business in New York State. The application was signed by Gerald Doren as President of Merchant, Inc.

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On January 7, 1977, the RCMP, pursuant to a search warrant served on Bell Telephone Company of Canada, obtained operating and billing records for various telephones listed to Merchant, Ltd. in Toronto. Those records reflect that calls were made on a daily basis during the period of October 19, 1976 to January 7, 1977 to telephone facilities bearing the number 716-856-1086 and other numbers all of which are listed to Merchant, Inc., Room 1629, 107 Delaware Avenue, Buffalo, New York 14202. The records further indicated that the telephone facilities bearing the numbers 716-849-9376 through 9387 were "off premise circuit extensions" billed to Merchant, Ltd. As explained by the telephone company to the RCMP, this means that a call placed to these numbers in Buffalo would automatically be relayed to telephones at Merchant, Ltd. in Toronto. In this regard, Investigator John Adamczyk, United States Immigration Service, who is working with Your Affiant in this investigation, advised that on February 16, 1977, he checked the records of the New York Telephone Company and determined that 716-849-9376 was listed to Merchant, Inc., Walbridge Building, Buffalo, New York. On that date, Investigator Adamczyk went to the Walbridge Building location and spoke with an employee of the McCall Telephone Answering Service who had shared office space with a telephone operator and switchboard utilized by Merchant, Inc. at the Walbridge Building. This employee advised that Merchant, Inc. had moved its switchboard to the Statler Hilton Hotel, Buffalo, New York.

During the aforementioned period of court authorized electronic surveillance between February 2 through March 31, 1977, on a daily basis telephone calls between Merchant, Ltd. in Toronto and Merchant, Inc. in Buffalo were intercepted. Pen register equipment utilized by the RCMP indicated that the outgoing calls from Merchant, Ltd. in Toronto were made

to telephone facilities listed to Merchant, Inc. at Room 1629, 107 Delaware Avenue, Buffalo, New York 14202. As a result of monitoring the first of these outgoing calls, the RCMP became familiar with the voices of two individuals identifying themselves as "Larry Jaffe" and "Karen" LNU and subsequently was able to identify the voices in incoming calls to Merchant, Ltd. By this identification procedure, the RCMP was able to determine which incoming calls to Merchant, Ltd. originated from Merchant, Inc. in Buffalo. The RCMP advises that a review of all of the calls monitored between Merchant, Ltd. and Merchant, Inc. reflects the following:

1. Merchant, Ltd. personnel have instructed Merchant, Inc. personnel as to the disposition of payments received by Merchant, Inc. for diamonds purchased by customers in the United States. In this regard, for the purposes of depositing and transferring these funds, it has been determined from these conversations that Merchant, Inc. maintains savings and checking accounts at as yet unidentified banks in the Buffalo area.

2. Discussion has occurred about the relative abilities of Merchant, Inc. salesmen to "pitch confidence" to customers in their telephone sales promotions as well as discussion about the fact that these salesmen were trained to do so at Merchant, Ltd. before they came to Merchant, Inc.

3. Discussion has occurred indicating that names of potential customers are requested from Merchant, Ltd. by Merchant, Inc. and that those names as well as the names of past customers are maintained in records at Merchant, Inc.

4. Merchant, Ltd. has instructed Merchant, Inc. as to the establishment and enforcement of Merchant, Inc. personnel policies (such as days and hours per day to be worked) and policies for dealing with customers (such as the procedure for limiting buy-backs of diamonds).

On April 12, 1977, Special Agent David A. Wright, United States Customs Service, advised Your Affiant that he (Wright) had reviewed his agency's records which indicated that during the period from January to April 1977 one Herschel Harris made repeated entries from Canada into the United States with varying amounts of diamonds consigned to Merchant, Inc. in Buffalo. In regard to these diamonds, S.A. Wright further advised that Harris made the following declarations of value on the following dates of entry.

1. January 19, 1977 - \$34,251
2. January 26, 1977 - \$14,961
3. February 3, 1977 - \$20,135
4. February 9, 1977 - \$41,690
5. February 14, 1977 - \$17,976
6. February 24, 1977 - \$46,080
7. March 2, 1977 - \$52,809
8. March 9, 1977 - \$60,864
9. March 16, 1977 - \$65,009
10. March 23, 1977 - \$61,510

S.A. Wright further advised that on March 23, 1977 he was notified that Harris had entered the United States at the Lewiston-Queenston Bridge and had declared diamonds consigned to Merchants, Inc. in Buffalo. Thereafter, Wright and one other agent observed Harris travel by car from the Grand Island Bridge area to the Statler Hilton Hotel, Buffalo, New York. Harris was then observed using the elevator inside the Statler Hilton Hotel at which time that surveillance was discontinued.

On April 12, 1977, Import Specialist James English, United States Customs Service, advised Your Affiant that on March 7, 1977, he conducted a routine official inquiry at the offices of Merchant, Inc. in the Statler Hilton Hotel, Buffalo, New York. At that time he spoke with an individual

who identified himself as "Mr. Jaffe" and who stated that he was office manager for Merchant, Inc. "Mr. Jaffe" further stated that he could not answer any questions concerning the operation of Merchant, Inc. and referred English to Merchant, Ltd. in Toronto for answers to any questions about Merchant, Inc.'s dealings in the United States.

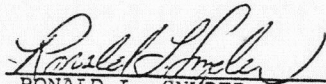
On April 6, 1977, Patrick Thomas, United States Postal Service Letter Carrier, Niagara Station, Buffalo, New York, advised Your Affiant that he (Thomas) is responsible for delivery of mail to the offices located in the Statler Hilton Hotel, Buffalo, New York. On a daily basis mail is received from throughout the United States addressed to Merchant, Inc. at Suite 1629 Statler Hilton Hotel. This mail is picked up daily at the Statler Hilton mail room by persons identifying themselves as employees of Merchant, Inc.

On April 6, 1977, Melvin Wells, United States Postal Service Registry Clerk, Niagara Station, Buffalo, New York advised Your Affiant that on a weekly basis a white female using the name "Karen" LNU and identifying herself as an employee of Merchant, Inc. has sent via registered, insured mail numerous small parcels to various persons throughout the United States. On several of these occasions, "Karen" has had conversation with Wells in which she has stated that these parcels contain diamonds sent from Canada to Merchant, Inc. for mailing to customers throughout the United States. On April 6, 1977, Your Affiant physically inspected 12 parcels identified by Wells as having been mailed on that date by "Karen". These parcels each measured 9 1/2" x 5" x 1 1/2" and each was covered with manila wrapping paper and bore a blue and white address label containing the name and address of the intended recipient as well as the return address of Merchant, Inc., Suite 1629, 107 Delaware Avenue, Buffalo, New York 14202. Wells advised that these parcels are identical

to the other parcels which have been mailed by "Karen" during approximately the last nine months. In this regard, on April 6, 1977, Your Affiant reviewed the records maintained at the Niagara Station Post Office evidencing the acceptance during the year 1977 by the Postal Service of registered, insured mail. These records indicate that from January 6 through April 6, 1977 approximately 333 registered, insured parcels having a declared total value of approximately \$571,900 were mailed to persons throughout the United States by Merchant, Inc., 107 Delaware Avenue, Buffalo, New York 14202.

WHEREFORE, based on the above facts and circumstances, Your Affiant believes that there is probable cause to believe that continuously since January 15, 1977 up to and including Merchant, Inc., Merchant, Ltd., the present, Gerald Doren, "Larry Jaffe" and others have participated in violation of Title 18, United States Code, Section 1341 (Mail Fraud), 1343 (Fraud by Wire) and 371 (Conspiracy) and that in the premises known as Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York 14202 there will be found evidence, fruits and instrumentalities of the aforesaid violations in the form of business, personnel and financial records; lists of customers' names and related records and correspondence; payments from customers and related banking records; telephone equipment and records of telephone billings and related matters; records of mailings; corporate and business documents; merchandise on hand; promotional literature. And, Your Affiant prays that search and seizure warrants be issued for the premises known as Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York, which premises have been described to Your Affiant by Investigator Adamczyk (who has on February 16, 1977 personally visited the

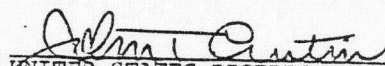
said premises) as an office suite consisting of three or four rooms on the 16th floor of the Statler Hilton Hotel utilized solely for conducting the business operations of Merchant, Inc. These premises have a maple colored wooden door bearing the number "1629".


RONALD L. SNYDER

Subscribed and Sworn to Before Me

This 13 Day of April, 1977

At Buffalo, New York


UNITED STATES DISTRICT JUDGE

RETURN

I received the attached search warrant April 13, 1977, and have executed it as follows:

On April 14, 1977 at 10:30 o'clock A M, I searched the person or premises described in the warrant and

I left a copy of the warrant with _____ at the place of search
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

See Exhibit "A" which is attached hereto and incorporated herein by reference.

This inventory was made in the presence of Lawrence Jaffey, Manager, Merchant Diamond Group, Inc. and Postal Inspector Clifton Harm.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this 18 day of April, 1977.

John T. Cant
Federal Magistrate

Lawrence E. Jeffery

EVIDENCE LOG

Case No.

Date 4-14-77

Completed By Robert S. Brook
Work Reporting

Item No.	Description	Located By	Where	Marked for	Disposition
1	Envelope containing receipt document found in waste basket	R. S. Brook A. J. Buil	Waste Basket	(1) Robert S. Brook 4-14-77	
2	Envelope containing 500 bills, currency, unassociated papers	R. S. Brook A. J. Buil	Top Drawer of Desk	(2) "	
3	Envelope containing assigned notes, deposit tickets, keys	R. S. Brook A. J. Buil	Upper Left Drawer	(3) "	
4	Envelope containing mailing card, check, printed statement, etc.	R. S. Brook A. J. Buil	Lower Left Drawer	(4) "	
5	Envelope containing assigned color outboard	R. S. Brook A. J. Buil	Right Drawer	(5) "	
6	Telephone 886-1081	R. S. Brook	Top of Desk	(6) RSB, AJB	
7	Telephone 849-9366	A. J. Buil	"	(7) RSB, AJB	
8	Telephone Intercom	R. S. Brook	"	(8) 4-21-77	
	Old National Bank, Cityville, W. Va.	# 2637-01-5	4-21-77	4,978.50	Gen. Carl Wright
	Bank of Danielsville, Danielsville, Ga.	# 10-34-073	4-21-77	4,978.50	Dr. Samuel Thompson
	First National Bank, Jackson, Miss.	# 36-067-73	4-21-77	33,150.00	William H. Friesdorf Jr.
	First National Bank, Hastings, Neb.	# 24-779-081	4-21-77	4,978.50	William Kottelhut
	Sun Bank of Riverside, Miami, Fla.	# 43-825-5	4-29-77	1,432.50	Edward R. Smith
	First National Bank, Providence, R.I.	# 62-6200117	4-27-77	1,432.50	Maurice W. Long

1 - 033

EXHIBIT "A"

EVIDENCE LOG

PAGE 1 OF 1

Case

No.

RECORDED

Completed

By D. WRIGHT

Work Reporting

No.

B-1 HENRY FESTA'S OFFICE

Date 04/14/77

Item No.	Description	Located By	Where	Marked for I.D.	Disposition
B-1-1	INDEX CARD FILE	KRZES	DESK TOP		
B-1-2	MISC. PAPERS	HARM	DESK TOP		
B-1-3	TELEPHONE	KRZES	DESK TOP		
B-1-4	ZIPPED FOLDER w/ PERS	HARM	DESK DRAWERS		
B-1-5	MISC. PAPERS	HARM	DESK DRAWERS		
B-1-6	MISC. PAPERS	HARM	WINDOW Ledge		
B-1-7	PAPERS AND CHARTS	HARM	STUCK TO WALL NEAR DESK		
B-1-8	COMMUNICATIONS PROPOSAL BOOK TELEPHONE CO.	HARM	CREDENZA TOP		
B-1-9	MISC. PAPERS	HARM	CREDENZA TOP		
B-1-10	MAIL ENVELOPES w/ CAN CUSTOMS DECLS.	HARM	INSIDE CREDENZA		
B-1-11	BOOKETS	HARM	TABLE TOP (SMALL TABLE)		

C34

EVIDENCE LOG

PAGE 1 OF 2

RECORDER

Case

No.

Completed

By WRIGHT

Work Reporting

No.

B-2 OFFICE - LAWRENCE JAFFEY'S

Date 04/14/77

Item No.	Description	Located By	Where	Marked for I.D.	Disposition
B-2-1	CONSOLE TELEPHONE	HARM	DESK TOP RIGHT		
B-2-1	TELEPHONE	HARM	DESK TOP LEFT		
B-2-3	INDEX CARD FILE	HARM	DESK TOP		
B-2-4	APPOINTMENT CALENDAR	HARM	DESK TOP		
B-2-5(2)	OFFICE SPEAKER MONITOR SPEAKER	HARM	DESK TOP		
B-25(1)	OFFICE PHONE MONITOR CONTROL	HARM	DESK TOP		
B-2-6	MISC. PAPERS	HARM	DESK TOP		
B-2-7	INDEX CARDS IN CARDBOARD BOX	HARM	DESK DRAWER LEFT		
B-2-8	MISC. PAPERS	HARM	DESK DRAWER		
B-2-9	MISC. PAPERS AND CHARTS	HARM	STUCK TO WALL NEAR DESK		
B-2-10	1 PINK SLIP OF PAPER	HARM	WASTEBASKET		
B-2-11	BLACK ZIPPERED BAG W/ PAPERS	HARM	CRENSHAW TOP		
CF-20	DESK APPOINTMENT PAD	ADAMCZYK	HALLWAY		

035

1100 201 0-

Completed

Work Reporting

No.

Date 04/14/77

036

EVIDENCE LOG

Case

No. _____

Completed

By WRIGHT

Work Reporting

No. _____

Room C-1 - MAIN ROOM

PAGE 1 OF 2

Date 04/14/77

Item No.	Description	Located By	Where	Marked for I.D.	Disposition
C-1-1	MISC. PAPERS ON WALL	HARM	STUCK ON WALL		
C-1-2	MISC PAPERS	HARM	ON TOP OF BIG DESK		
C-1-3	TELEPHONE	HARM	ON TOP OF BIG DESK		
C-1-4	BLACK PLASTIC INDEX BOX	HARM	BIG DESK TOP		
C-1-5	MISC PAPERS	HARM	BIG DESK DRAWERS		
C-1-6	1 PINK SLIP	HARM	WASTEBASKET NEAR BIG DESK		
C-1-7	TAN PLASTIC INDEX FILE BOX	HARM	TABLE TOP		
C-1-8	TELEPHONE	HARM	TABLE TOP		
C-1-9	MISC PAPERS	HARM	TABLE TOP		
C-1-10	PAPERS AND CHART	HARM	STUCK ON WALL NEAR TABLE		
C-1-11	MISC PAPERS	HARM	STUCK ON WALL NEAR WINDOW SOUTH		
C-1-12	MISC. PAPERS	HARM	STUCK ON WALL NEAR WINDOW'S NORTH		

037

EVIDENCE LOG

Case
No.RECORDED
Completed
By WRIGHT
Work Reporting
No.

PAGE 2 OF 2

Date 04/14/77

Item No.	Description	Located By	Where	Marked for I.D.	Disposition
C-1-13	TELEPHONE	HARM	SHELF ON WEST WINDOW LEDGE		
C-1-14	MISC. BROCHERS 3 CARTONS	SNYDER	FILE CABINET SOUTH WALL		
C-1-15	MISC. PAPERS, RECORDS + BLACK CHECKS - CASAP 73.67	SNYDER	2 BLACK FILE CABINETS - N. WALL		
C-1-16	RUBBER STAMPS/STAMPERS MISC. PAPERS	KORMANN	HALLWAY CREMEXA		
C-1-17	PLASTIC DIAMOND DISCS	HOTCHKISS	HALLWAY CREMEXA		
C-1-18	TELEPHONE NOT IN USE	HARM	STORAGE SHELFS		
C-1-19	MISC DIAMOND TELEPHONE BROCHERS	SNYDER	STORAGE SHELFS		

038

EVIDENCE LOG

Case

No.

Date 04-14-77

Completed

By R.E. Champagne

Work Reporting

No.

Item No.	Description	Located By	Where	Marked for I.D.	Disposition
C-1	7 pieces of paper	S/A Champagne	McINTYRE'S Office N. Wall	C-1 04-14-77 (REC)	
C-2	11 pieces of paper	S/A Champagne	McINTYRE'S Office East Top of stairs	C-2 04-14-77 (REC)	
C-3	Phone number Larry #3674372	S/A Champagne	McIntyre's Office - East Top	C-3 04-14-77 (REC)	
C-4	Lead cards 3x5" + misc. 4x5" papers	S/A Champagne	McIntyre's Office - East Top	C-4 04-14-77 (REC)	
C-5	Cell sheets	S/A Champagne	McIntyre's Office - East Room Top drawer	C-5 04-14-77 (REC)	
C-6	Misc papers	S/A Champagne	McIntyre's Office Top Rt. desk drawer	C-6 04-14-77 (REC)	
C-7	Misc. papers + lead cards	S/A Champagne	McIntyre's Office Bottom Rt. desk drawer	C-7 04-14-77 (REC)	
C-8	Misc. papers Minty's papers + lead cards	S/A Champagne	McIntyre's Office Bottom Rt. desk drawer	C-8 04-14-77 (REC)	
C-9	Black Board about 3' x 4'	S/A Champagne	McIntyre's Office - against S. Wall	C-9 04-14-77 (REC)	
C-10	6 pieces of paper	S/A Champagne + Adams	Bowens' Office N. Wall	C-10 04-14-77 (REC)	
C-11	6 pieces of paper + manifest of cells + 1 piece of paper	S/A Champagne + Adams	Bowens' Office Table/Chair Top	C-11 04-14-77 (REC)	
C-12	Telephone	Adams	Bowens' Office Back Chair	C-12 04-14-77	
C-13	Lead card 5x7" + B/W in Top	Adams	Bowens' Office Back Chair	C-13 04-14-77 (130)	

039

No

046

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

MERCHANT DIAMOND GROUP, INC.

APPLICATION

Your Affiants, Special Attorney Lloyd George Parry of the Department of Justice and Postal Inspector Ronald L. Snyder, having been duly sworn in the manner provided by law, depose and say that there is probable cause to believe that Merchant Diamond Group, Inc., Suite 1629, Statler Hilton Building, 107 Delaware Avenue, Buffalo, New York and its principal officers, Gerald Doren (the Corporation president), Allen Lindzon, Stanley H. Bader and Harold Eric Smith all of Toronto, Ontario, are presently and have for some time past conspired together to violate the provisions of 18 U.S.C. Sections 1341 (Mail Fraud) and 1343 (Wire Fraud), all in violation of 18 U.S.C. Section 371 (Conspiracy), and that evidence and instrumentalities of the said violations in the form of diamonds and packaging will be delivered to the custody of the United States Postal Service at Niagara Square Station sometime on or about Wednesday, April 13, 1977 by an employee of the said Merchant Diamond Group, Inc. (normally Karen LMU).

The specific facts and circumstances supporting these conclusions are contained in the attached and incorporated Affidavit of Postal Inspector R. L. Snyder.

2 2

Your Affiants aver that search and seizure warrants directed against Merchant Diamond Group and a companion organization (The London House Bullion and Diamond Dealers, Ltd.) will be executed on a coordinated basis in Toronto, New York City and Buffalo on Thursday, April 14, 1977. The timing of the raids is dictated by factors other than the delivery of the diamonds to Buffalo. In order to seize the diamonds which will be mailed from here on Wednesday, both for purposes of retaining them as evidence and of preventing their introduction into the stream of commerce, while at the same time not jeopardizing the coordinated raids scheduled for Thursday, it is necessary to interdict the normal processes which would occur once the diamonds are delivered to the Postal Service for routine delivery.

WHEREFORE, Your Affiants request an Order authorizing and commanding the Postmaster of Buffalo and United States Postal Inspectors to seize and detain any and all packages which are delivered to the Niagara Station Post Office by agents or employees of the said Merchant Diamond Group on or about April 13, 1977 and which are declared to contain diamonds; and further to hold the said items safely and to retain the Order, Application and Affidavit under seal until such time as other related warrants are executed, after which the said packages and their contents shall be treated as seized property and the Order, Application, Affidavit and Return shall be processed in the manner required by law.

John J. Pacey
AFFIANT
Robert H. Pacey
AFFIANT

Subscribed and Sworn To Before Me
this 13 Day of April, 1977
At Buffalo, New York

W. T. Austin

042

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

MERCHANT DIAMOND GROUP, INC. :

O R D E R

TO: THE POSTMASTER OF BUFFALO, NEW YORK and
ANY UNITED STATES POSTAL INSPECTOR:

AN APPLICATION having been made before this Court by Department of Justice Attorney Lloyd George Parry and Postal Inspector Ronald L. Snyder stating that they have probable cause to believe that the Merchant Diamond Group, Inc., Suite 1629, Statler Hilton Building, 107 Delaware Avenue, Buffalo, New York and certain of its officers, agents and employees are presently committing violations of Title 18, United States Code, Sections 371 (Conspiracy), 1341 (Mail Fraud) and 1343 (Wire Fraud), and that evidence and instrumentalities of the said violations in the form of packages containing diamonds will be delivered to the United States Post Office at Niagara Square, Buffalo, New York by agents or employees of the said Merchant Diamond Group on or about Wednesday, April 13, 1977;

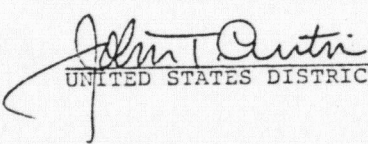
AND, IT APPEARING to this Court, after careful consideration of the facts and circumstances related in the attached and incorporated Application and Affidavit, that there is probable cause to believe that the said violations have been, are being and will continue to be committed by the said

Merchant Diamond Group, Inc. of Buffalo and others and that the said packages containing diamonds will be delivered as aforesaid and will then constitute evidence and instrumentalities of the said violations, and that the relief requested is necessary and appropriate in view of the investigative action planned in New York City and Toronto:

NOW, THEREFORE, IT IS ORDERED that the Postmaster of Buffalo, New York and any United States Postal Inspector be, and are hereby authorized and commanded to seize and detain any and all packages described as containing diamonds which are delivered to the Niagara Square Postal Station on or about April 13, 1977 by agents or employees of the said Merchant Diamond Group, Inc.; and, upon seizing any such items, the said Postal Inspector shall retain the property safely in custody together with this Order, Application and Affidavit until such time as such other warrants are executed, or in any event within ten days of the date of this Order, whichever occurs first; thereafter making a prompt Return to this Court as otherwise required by law.

DATED: April 13, 1977

AT: Buffalo, New York


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

MERCHANT DIAMOND GROUP INC.

R E T U R N

On April 13, 1977, I received the attached search warrant and executed it as follows:

On April 13, 1977, at approximately 9:30 AM, I delivered a copy of the said search warrant to William E. Fulcher, Manager, Niagara Square Station, U.S. Postal Service.

On April 14, 1977, at approximately 8:50 AM, I received from Mr. Fulcher the items set forth in the attached inventory marked Exhibit "A" and incorporated herein by reference. I left a copy of the search warrant at the place of search together with a receipt for the items seized.

The said inventory was made in the presence of Mr. Fulcher.

I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

Ronald J. Gyles, Postal Inspector

Subscribed and sworn to and returned before me this 18
day of April, 1977.

John I. Cantor
UNITED STATES DISTRICT COURT JUDGE

I, Ronald L. Snyder, Post Inspector, have taken into my possession
the following mail matter pursuant to a Court Order served upon Mr.
William Fulcher on April 13, 1977:

4 Registered Parcels

- (1.) #458191 addressed to William W. Crutney
- (2.) #458192 " " Jack Goldfarb
- (3.) #458192 " " Robert Reid
- (4.) #458194 " " E. Saunders Ruffin

Wm W E Fulcher

April 14, 1977

R. L. Snyder

R.L. Snyder, Postal Inspector

April 14, 1977 2:50 AM

United States District Court

FOR THE
WESTERN DISTRICT OF NEW YORK

Docket No. _____

Case No. _____

UNITED STATES OF AMERICA

VS.

SAFE DEPOSIT BOX #123
STATLER HILTON OFFICE
MARINE MIDLAND BANK
BUFFALO, NEW YORK

AFFIDAVIT FOR
SEARCH WARRANT

BEFORE John T. Curtin, United States District Court, Western District of N.Y., Buffalo, N.Y.
Name of Judge or Federal Magistrate Address of Judge or Federal Magistrate

The undersigned being duly sworn deposes and says:

That he has reason to believe that ~~UNKNOWN PERSONS~~
(on the premises known as)

SAFE DEPOSIT BOX #123
STATLER HILTON OFFICE
MARINE MIDLAND BANK
BUFFALO, NEW YORK

in the Western

District of New York

there is now being concealed certain property, namely

here describe property

Diamonds and other property relating to
Merchant Diamond Group, Inc.
Suite 1629 Statler Hilton Hotel
107 Delaware Avenue
Buffalo, New York

which are evidence and instrumentalities of violations of 18 U.S.C. §§1341, 1343 and 371
here give alleged grounds for search and seizure

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows set forth in the attached affidavit of Robert S. Brock dated this date, marked Exhibit "One", and incorporated herein by reference.

Paul L. Sch
United States Postal Inspector

Robert S. Brock
Special Agent, U.S. Customs Service
Signature of Affiant
Official Title, if any.

Sworn to before me, and subscribed in my presence,

April 14, 1977
John T. Curtin
Judge or Federal Magistrate

Notary Public for the State of New York
I, _____, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in my files and records.

047

AFFIDAVIT

Robert S. Brock, being duly sworn according to law,
deposes and states the following:

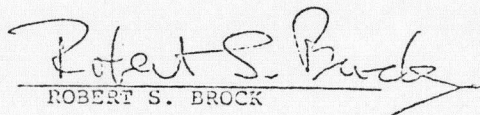
Since April 1970, he has been a Special Agent with
the United States Customs Service.

On April 14, 1977, he and other authorized federal
agents executed a search warrant on the premises known as The
Merchant Diamond Group, Inc. (Merchant, Inc.), Suite 1629
Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York
14202. During the course of executing the said warrant, he
interviewed at the said premises one Karen Efthermis who
identified herself as an employee of Merchant, Inc. At that
time Ms. Efthermis advised Your Affiant that Merchant, Inc.
rented safety deposit box No. 123 at the Statler Hilton Office,
Marine Midland Bank, Buffalo, New York. She further advised
that the sole contents of the said box consists of diamonds
belonging to Merchant, Inc. and that she in the course of her
employment with Merchant, Inc. had regular access to the said
safe deposit box.

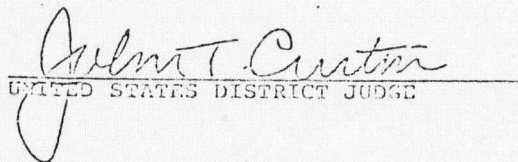
On April 14, 1977, Your Affiant interviewed David
Kirst, Branch Manager, Statler Hilton Office, Marine Midland
Bank who confirmed that the said safe deposit box was rented
and utilized by Merchant, Inc.

Your Affiant has read the attached Affidavit of
Postal Inspector Ronald Snyder dated April 13, 1977, a copy
of which is marked Exhibit "A", attached hereto and incorporated
herein by reference.

Wherefore, based on the above facts and circumstances, Your Affiant believes that there is probable cause to believe that violations of Sections 1341, 1343 and 371, Title 18 United States Code (Mail Fraud, Wire Fraud and Conspiracy) have been and are occurring and that the diamonds contained in the said safe deposit box are evidence and instrumentalities of those violations. And Your Affiant prays that a search and seizure warrant be issued for the safe deposit box No. 123, Statler Hilton Office, Marine Midland Bank, Buffalo, New York.


ROBERT S. BROCK

Sworn to and Subscribed Before
Me this 14 Day of April, 1977.


UNITED STATES DISTRICT JUDGE

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

VS.

SAFE DEPOSIT BOX #123
STATLER HILTON OFFICE
MARINE MIDLAND BANK
BUFFALO, NEW YORK

Docket No.

Case No.

SEARCH WARRANT

To ANY AUTHORIZED FEDERAL AGENT

Affidavit(s) having been made before me by Special Agent Robert S. Brock,
United States Customs Service and Postal Inspector Ronald L. Snyder that they havethat he has reason to believe that { ~~on the person of~~
on the premises known as }SAFE DEPOSIT BOX #123
STATLER HILTON OFFICE
MARINE MIDLAND BANK
BUFFALO, NEW YORK

in the Western

District of New York

there is now being concealed certain property, namely Diamonds and other property relating
here describe propertyto Merchant Diamond Group, Inc.
Suite 1629 Statler Hilton Hotel
107 Delaware Avenue
Buffalo, New Yorkwhich are evidence and instrumentalities of violations of 18 U.S.C. §§1341, 1343
and 371.and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the person or premises above described and that grounds for application for issuance of the
search warrant exist as stated in the supporting affidavit(s).You are hereby commanded to search within a period of 5 days hence
(not to exceed 10 days) the person or place named for the property specified, serving this warrant
and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found
~~at any time on the day or night~~
there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written
inventory of the property seized and promptly return this warrant and bring the property before
this Court as required by law.

Federal judge or magistrate

Dated this 14 day of April, 1977John T. Custer
Judge (Federal or State Court of Record) or Federal Magistrate*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision
in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for rea-
sonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

RETURN

I received the attached search warrant April 14, 1977, and have executed it as follows:

On April 14, 1977 at 5:00 o'clock P.M, I searched the person or premises described in the warrant and

I left a copy of the warrant ~~with~~ at the place of search
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

See Exhibit "A" which is attached hereto and incorporated herein by reference.

This inventory was made in the presence of Daniel Kirst, Branch Manager, Marine Midland Bank and S.A. Robert Brock, U.S. Customs Service.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this 18 day of April, 1977

John T. Carter
Federal Magistrate

RETURN

I received the attached search warrant April 14, 1977, and have executed it as follows:

On April 14, 1977 at 5:00 o'clock P.M, I searched the person or premises described in the warrant and

I left a copy of the warrant ~~with~~ at the place of search

name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

See Exhibit "A" which is attached hereto and incorporated herein by reference.

This inventory was made in the presence of Daniel Kirst, Branch Manager, Marine Midland Bank and S.A. Robert Brock, U.S. Customs Service.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this 18 day of April, 1977

John C. Carter
Federal Magistrate

Inventory of items seized from Safety Deposit Box #123, Marine Midland Bank, Statler Hilton Branch, April 14, 1977 by R. L. Snyder, Postal Inspector and Robert Brock, United States Customs.

Two metal cabinets found inside of box, metal cabinet on bottom empty. The following items were seized from the top metal cabinet:

<u>NAME</u>	<u>DISC NO.</u>	<u>NO. OF DIAMOND</u>	<u>CARAT WEIGHT</u>	<u>DATE</u>
<u>LOOSE DIAMOND DISC</u>	B6972	1	.42	8/12/76
<u>SACKED DIAMOND DISC</u>				
A. R. Jackson	B8164	2	.50	2/28/77
Dr. Albert H. Owen	178	2	.55	7/29/76
Mary Green	233	5	1.25	8/10/76
David Berney	176	2	.57	7/20/76
Dr. H. Mark	B6685	5	1.60	6/10/76
Mr. K.H. Wubben	B6780	3	1.51	10/28/76
Dr. M. Walker	188	15	4.98+	7/27/76
Gary Millen	B8008	3	0.93	1/25/77
" "	148	2	.55	6/24/76
M.C. Melsen	B6659	2	.55	9/27/76
Ronald G. Woodworth	219	3	.93	8/10/76
Kenard C. Boone	236	2	.56	8/12/76
Dr. Pablo Figueroa	B8036	3	.90	2/01/77
Robert Steele	B8061	2	.50	8/02/77
Dr. Albert Owen	B6571B	5	1.60	8/09/76
Mary H. Green	200	2	.57	7/29/76
Dr. Robert Doorley	239	2	.61	8/12/76
* three diamonds				
William Snelson				
*packing slip \$715.00	B7007	1	.42	12/14/76
Gary E. Larson	214	2	.60	8/03/76
J. Duane Jarnagin	B6802	2	.55	10/29/76
Dr. Albert Owen	B6571	5	1.65	8/09/76
Dr. Stanley Salasky	221	2	.57	8/10/76
<u>IN ENVELOPE</u>				
M. Hutchenson	B8235	1	.54	3/14/77

ONE BOX: TO: Merchant Diamond Group, Inc.
2455 Hollywood Blvd.
Hollywood, Florida

#33020 - containing the following:

Twelve packets - white paper

#12	2 round diamonds
#11	1 round diamond
#10	2 round diamonds
# 9	3 round diamonds
# 8	6 " "
# 7	6 " "
# 6	1 round diamond
# 5	7 round diamonds
# 4	2 " "
# 3	2 " "
#2	1 round diamond
# 1	7 round diamonds

ONE REGISTERED ENVELOPE #130896 TO: Marine Midland Bank

Meter date 9/28/76 from D.D.S. J.O. Andreas, Kirkwood, MO

Opened

#234, 3, .92, 8/10/76

CARDBOARD BOX Reg. 7394112 Bijoux, Montreal, Canada

Date - March 28, 1976

CLEAR PLASTIC BAG

Containing:	<u>DISC NO.</u>	<u>NO. OF DIAMOND</u>	<u>CARAT WEIGHT</u>	<u>DATE</u>
	162B	5	1.50	6/30/76
	5702	2	1.50	12/18/76

#12 BLUE JEWELRY BOX

One diamond (gold) ring containing
three round diamonds

#18 BLUE JEWELRY BOX

One (silver) ring containing two large
diamonds and eight smaller diamonds

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

James M. Kilburn
Asst. Security Officer
4-14-77
12:47 P.M.

IN THE MATTER OF THE MERCHANT :
DIAMOND GROUP, INC. BANK ACCOUNTS :

APPLICATION AND ORDER

THE UNITED STATES OF AMERICA, by and through Department of Justice Attorney, Lloyd George Parry hereby makes Application for an Order as described below:

On April 13, 1977, this Court issued a Search and Seizure Warrant for the premises known as the Merchant Diamond Group, Inc., Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York 14202 upon a finding of probable cause that violations had and were occurring of Section 1341, 1343 and 371 of Title 18, United States Code (Mail Fraud, Wire Fraud and Conspiracy). On the morning of April 14, 1977 authorized Federal Agents executed the warrant at the above-named premises and recovered, among other things, the following:

1. Deposit slips for account No. 756-75037-7,
Statler Hilton Office, Marine Midland Bank, Buffalo, New York.
2. Deposit slips for checking account No. 756-75044-0,
Statler Hilton Office, Marine Midland Bank, Buffalo, New York.

Your Applicant believes that the sums contained in the said accounts are the fruits of the Mail Fraud, Wire Fraud and Conspiracy as described to this Court in the Affidavit of Postal Inspector Ronald Snyder, dated April 13, 1977. Therefore, in order to preserve the status quo, the Government requests that this

Court order for a period of 30 days or such earlier time as the Court shall designate that the Marine Midland Bank freeze the said accounts effective immediately and shall not release, transfer and otherwise dispose of the funds therein.

Respectfully submitted,

Lloyd George Parry
LLOYD GEORGE PARRY
Department of Justice Attorney

Subscribed and Sworn to Before

Me This 14 Day of April, 1977.

John T. Austin
U.S.D.C.
* * *

IT IS SO ORDERED

John T. Austin
UNITED STATES DISTRICT JUDGE

IN THE COUNTY COURT OF ERIE
FOR THE STATE OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

MERCHANT DIAMOND GROUP INC. :

AFFIDAVIT FOR FEDERAL SEARCH WARRANT

YOUR APPLICANTS, United States Department of Justice Attorney Lloyd George Parry and United States Postal Inspector Ronald L. Snyder, having been duly sworn, depose and say the following:

On April 13, 1977, the Hon. John T. Curtin of the United States District Court for the Western District of New York made a finding that there was probable cause to believe that Merchant Diamond Group Inc. located in Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York and others were violating the provisions of Title 18, United States Code, Sections 371 (Conspiracy), 1341 (Mail Fraud) and 1343 (Wire Fraud); and that evidence, fruits and instrumentalities of those crimes would be found upon the premises. A separate Order was issued authorizing the seizure of diamonds from the United States Mails as instrumentalities of the violations. That finding of probable cause was based upon the ten page Affidavit of Postal Inspector Snyder dated April 13, 1977 the contents of which are incorporated herein by reference.

On April 13-14, 1977, Federal Agents executed the Order and Warrant recovering some 15 diamonds, numerous business records, bank account records and a safety deposit box key.

At midday, Chief Judge Curtin issued an Order freezing the assets of the two known accounts, being No. 756-75037-7 and 756-75044-0 at the Statler Branch of the Marine Midland Bank. In late afternoon, Chief Judge Curtin made a second and similar finding of probable cause and ^{issued} a warrant authorizing the search of the said safety deposit box located in the same bank. Execution of that warrant produced some 125 diamonds of unknown value.

A deposit ticket recovered during the search of the Merchant Office on Thursday morning revealed that some \$69,000 had been deposited in the same branch bank earlier that morning. It is impossible to determine to which account this went and Marine Midland will not disclose whether there are additional checking accounts or savings accounts. The investigation has revealed that the principals in Toronto regularly transfer funds from and to the Buffalo bank by telephone. The Government therefore must determine the exact number of accounts in the said branch and their balances before and after the activity of April 14 in order to prevent removal of the evidence, fruits and instrumentalities.

WHEREFORE, Your Applicants pray that this Court issue a Warrant pursuant to Rule 41 of the Federal Rules of Criminal Procedure authorizing and commanding any United States Postal Inspector to enter upon the premises of the Marine Midland Bank, Statler Hilton Branch, 107 Delaware Avenue, Buffalo, New York, there to obtain, in the least disruptive manner possible and with appropriate assistance of bank personnel, the following: the balance information on accounts No. 756-75037-7 and 756-75044-0 for April 12, 13, 14 and 15, 1977 together with any deposit and withdrawal orders for those accounts for those

dates, whether or not honored, at the identity of any other checking or savings accounts or accounts of any kind in the names of Merchant Diamond Group Inc., Merchant Diamond Group Limited, Harold Eric Smith, Gerald Doren or Lawrence Jaffey and records or documents relating to any and all of the said accounts, as well as the rental agreements, records of entry and records and documents of any kind relating to any safety deposit boxes rented by those corporations or individuals, whether or not by a different name known to the said bank, and to seize the ^{said} records and documents ^{and all} ~~and all~~ funds in any and all such checking accounts as well as the savings accounts, or account of any kind.

And it is further requested that the said warrant be sealed with the other prior warrants and that it be returned to Chief Judge Curtin. In addition, Your Affiants aver that no Federal District Judge or United States Magistrate is available in the City of Buffalo this day and time is of the essence in order to preserve the evidence.

Lloyd Gene Perry
AFFIANT

Paul L. Lytle
AFFIANT

Subscribed and Sworn To Before
Me this 15 Day of April, 1977.

William G. Hefner
COUNTY COURT JUDGE

059

059

COUNTY COURT OF ERIE
STATE OF NEW YORK

UNITED STATES OF AMERICA

-v-

MERCHANT DIAMOND GROUP INC.

O R D E R

TO: ANY UNITED STATES POSTAL INSPECTOR and
THE CHIEF EXECUTIVE OFFICER OF THE MARINE MIDLAND BANK

AN AFFIDAVIT having been made before this Court, pursuant to Rule 41 of the Federal Rules of Criminal Procedure, by Department of Justice Attorney Lloyd George Parry and United States Postal Inspector Ronald Snyder (the contents of which are incorporated herein); and this Court having made the following findings:

1. That there is no Federal Judicial Officer available in the City of Buffalo on this date;

2. That there are exigent circumstances requiring that the Government be afforded the relief sought in order to prevent the improper removal of evidence, fruits and instrumentalities of a crime;

3. That there is probable cause to believe that Merchant Diamond Group Inc. of Buffalo, New York and others have committed violations of 18 U.S.C. Sections 371 (Conspiracy), 1341 (Mail Fraud) and 1343 (Wire Fraud).

4. That there is probable cause to believe that additional evidence, fruits and instrumentalities of the said violations in the form of checking accounts, savings accounts, and safety deposit boxes and records relating thereto are presently located at the Marine Midland Bank, 107 Delaware Avenue, Buffalo, New York:

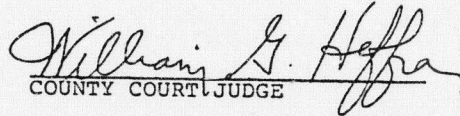
NOW, THEREFORE, IT IS ORDERED that any United States Postal Inspector be and is hereby authorized and commanded to enter upon the premises of the said Marine Midland Bank, Statler Hilton Branch, 107 Delaware Avenue, Buffalo, New York and there to obtain, in the least disruptive manner possible and with appropriate assistance of bank personnel, the following documents, items and information which are fruits, instrumentalities or evidence of the violations specified herein:

(1) The statements of balances on accounts No. 756-75037-7 and 756-75044-0 for April 12, 13, 14 and 15, 1977 together with any deposit and withdrawal orders for those accounts for those dates, whether or not honored; (2) The identity of any other checking or savings accounts or accounts of any kind in the names of Merchant Diamond Group Inc., Merchant Diamond Group Limited, Harold Eric Smith, Gerald Doren or Lawrance Jaffey; (3) Records and documents relating to any and all of the said accounts, as well as (4) The rental agreements, records of entry, and records and documents of any kind relating to any safety deposit boxes rented by those corporations or individuals, whether or not by a different name known to the said bank; and the said Postal Inspector is further authorized and commanded to seize any such documents, items, and information as well as the assets of any accounts presently known or discovered pursuant to this Order.

PROVIDED, that this Order and Application shall remain sealed pending action by the Federal District Court, and that a Return shall be made to Chief Judge John T. Curtin on the first working day that he is in the City of Buffalo. And further provided that this Order shall be executed forthwith in the daytime.

DATED: April 15, 1977

AT: Buffalo, New York


COUNTY COURT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

MERCHANT DIAMOND GROUP INC.

R E T U R N

On April 15, 1977, I received the attached search warrant and executed it as follows:

On April 15 and April 18, 1977, during daylight hours, I searched the premises described in the warrant and left a copy of the warrant at the place of search together with a receipt for the items seized.

An inventory of property taken pursuant to the warrant is marked Exhibit "A", attached hereto and incorporated herein by reference. This inventory was made in the presence of Daniel Kirst, Branch Manager, Marine Midland Bank, and Postal Inspector Frank Kormann.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

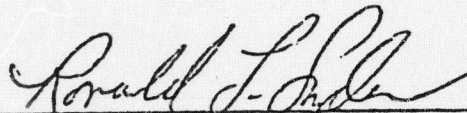
Subscribed and sworn to and returned before me this
day of April, 1977.

UNITED STATES DISTRICT COURT JUDGE

Itemized Listing of Items Seized from Marine Midland Bank, Statler Hilton Branch, Pursuant to Search Warrant Served April 15, 1977:

I, RONALD L. SNYDER, Postal Inspector, have taken into my possession the following:

The funds contained in Account #756-44532-9, Marine Midland Bank, Statler Hilton Branch, Buffalo, N.Y. --
These funds total \$20,625.31.



RONALD L. SNYDER, POSTAL INSPECTOR
April 15, 1977

EXHIBIT "A"

064

Itemized Listing of Items Seized from Marine Midland Bank, Statler Hilton Branch, Pursuant to Search Warrant Served April 15, 1977:

I, RONALD L. SNYDER, Postal Inspector, have taken into my possession the following items:

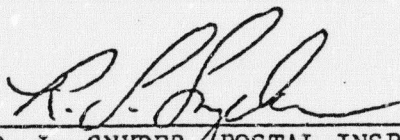
- 45 Photocopies of Safety Deposit Admittance slips for boxes rented to Merchant Diamond Group.

Photocopies of Certificate of Resolution for Safe Deposit Box #451 dated 9-8-76, contract to rented box SD4SF and letter of revocation concerning H. Eric Smith.

Photocopies of Certificate of Resolution for Safe Deposit Box #607 dated 3-7-77, contract to rent box SD4SF, and a copy of MDG minutes showing authorized persons entering said box.

Photocopies of Certificate of Resolution for Safe Deposit Box #123 dated 4-6-77, contract to rent said box, and a copy of MDG Inc. minutes showing authorized persons entering said box.

Photocopies of signature cards for Corporation Checking Account #756-75037-7 dated 8-18-76, and Account #756-75044-0 dated 8-18-76⁽²⁾, and Commercial Savings or Time Deposit Account #756-44532-9 dated 8-18-76.


R. L. SNYDER, POSTAL INSPECTOR

Dated: April 18, 1977
4:20 P.M.

D. KIRST

EXHIBIT "A"

065

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Original Filed 2/13/77

UNITED STATES OF AMERICA :

-v- :

Misc. Crim. No. 214 :

THE MERCHANT DIAMOND GROUP, INC.:

APPLICATION AND ORDER

THE UNITED STATES OF AMERICA, by and through Department of Justice Attorney Lloyd George Parry, hereby makes Application for an Order as described below:

1. As part of an ongoing investigation of mail fraud (18 U.S.C. §1341) and wire fraud (18 U.S.C. §1343) violations by The Merchant Diamond Group, Inc. (Merchant, Inc.) of Buffalo, New York, on April 14, 1977, the Government executed a search warrant at the office of Merchant, Inc. located at Suite 1629, Statler Hilton Hotel. As a result of that search it was determined that Merchant, Inc. maintained two checking accounts numbered 756-75037-7 and 756-75044-0 at the Statler Hilton Branch of the Marine Midland Bank. Accordingly, on April 14, 1977, upon application by the Government, the Honorable John T. Curtin, United States District Court Judge for the Western District of New York issued an Order directing the Marine Midland Bank not to release, transfer and otherwise dispose the funds contained in the said accounts for a period of 30 days. A copy of that Order is attached hereto as Exhibit "A".

2. Since April 14, 1977, the Government's investigation of Merchant, Inc. has continued. As a result, your Applicant continues to believe that the funds contained in the said

accounts constitute evidence, fruits and instrumentalities of mail fraud and wire fraud violations by Merchant, Inc.

3. On May 6, 1977, your Applicant was advised by Court personnel that Judge Curtin had departed the jurisdiction and would not return until approximately May 26, 1977. In this regard Judge Curtin's Order of April 14, 1977, is due to expire on May 13, 1977.

4. THEREFORE, in order to preserve the status quo until such time as Judge Curtin shall return to the jurisdiction for further proceedings in this matter, the Government requests that this Court order for a period of 30 days or such earlier time as the Court shall designate that the Marine Midland Bank continue to freeze accounts numbered 756-75037-7 and 756-75044-0 and shall not release, transfer and otherwise dispose of the funds therein.

Respectfully submitted,

Lloyd George Parry

LLOYD GEORGE PARRY
Department of Justice Attorney

Subscribed and Sworn to Before

Me this 13th day of May, 1977.

John T. Self

UNITED STATES DISTRICT JUDGE

IT IS SO ORDERED

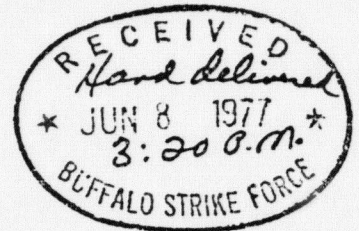
John T. Self

UNITED STATES DISTRICT COURT JUDGE

DATED: May 13, 1977

AT : 10:30 a.m.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



Misc. Crim. No. 214

UNITED STATES OF AMERICA

vs.

ORDER TO SHOW CAUSE

MERCHANT DIAMOND GROUP, INC.

Upon reading and filing the annexed Affidavit of Brian P. Fitzgerald, Esq., duly sworn to on the 8th day of June, 1977 and upon all the prior pleadings and proceedings heretofore had herein, let the United States of America, by its attorney, Lloyd George Perry, show cause at Part I of this Court at 68 Court Street, Buffalo, New York, on the tenth day of June, 1977 at 9:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order should not be entered pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure returning the property of the Merchant Diamond Group, Inc. which was seized pursuant to search and seizure warrants issued by this Court on April 13 and 14, 1977 and by the Honorable William Heffron, Justice of Erie County Court, on April 15, 1977, upon the ground that said searches and seizures are unlawful and in violation of the laws and Constitution of the United States of America and upon the ground that the affidavits submitted in support of said warrants were inaccurate, misleading and contained

false information or, in the alternative, ordering a hearing on this motion and it is further

ORDERED that service of a copy of this Order together with the papers upon which it is granted, upon the office of the United States Department of Justice, Organized Crime Strike Force on or before 5:00 p.m. on June 8, 1977 be deemed good and sufficient service.

S/ John T. Curtin

HON. JOHN T. CURTIN,
U.S. District Court Judge
for the Western District
of New York

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

MERCHANT DIAMOND GROUP, INC.

Misc. Crim. No. 214

AFFIDAVIT IN SUPPORT OF
MOTION FOR THE RETURN OF
PROPERTY AND THE SUPPRES-
SION OF EVIDENCE.

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

BRIAN P. FITZGERALD, being duly sworn, deposes
and says:

1. I am an attorney at law and associated with the law firm of Saperston, Day & Radler, attorneys for the Merchant Diamond Group, Inc. (hereinafter referred to as MDG, Inc.). I am a member of the Bar of the State of New York and a member of the Bar of the United States District Court for the Western District of New York.

2. I make this affidavit in support of a motion pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure by MDG, Inc. for the return of certain property currently in the possession of United States law enforcement agencies. It is respectfully submitted that this property should be returned to MDG, Inc. since the search and seizures

which took place on April 13, 14 and 15 were improper and illegal under the laws and Constitution of the United States.

3. I make this affidavit based upon my personal examination of the books and records of MDG, Inc. and its parent corporation, Merchant Diamond Group, Ltd., and a review of the pleadings and affidavits before this Court.

HISTORY OF MDG, INC. - MDG, INC.'S SALES POLICIES.

4. Defendant is a corporation duly licensed to transact business in the State of New York and is in the business of selling high quality diamonds. In furtherance of its business, defendant maintains an office at Suite 1627 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York, and a safe deposit box and bank accounts in the Marine Midland Bank, Statler Hilton branch. Upon information and belief, defendant's business is a legitimate business enterprise carried on openly. Defendant is a member of the Buffalo Area Chamber of Commerce, the Better Business Bureau of Buffalo, and is listed with Dun & Bradstreet Canada Ltd. Merchant Diamond Group, Ltd., the parent corporation of MDG, Inc., was incorporated on April 17, 1974 under the laws of the province of Ontario, Canada. Gerald Doren is the sole director of MDG, Inc. and also serves as its president and secretary. Anthony Lawrence is the vice president of the

corporation. APGE Corporation, Anthony Lawrence, Joyce Lindzon and Betty Smith each own more than 10% of the stock of MDG, Inc.

5. Merchant Diamond Group, Ltd. has one wholly owned subsidiary, MDG, Inc. MDG, Inc. was incorporated in Florida on March 17, 1976 and became qualified to do business in New York on September 16, 1976. The Florida office of MDG, Inc. was located at 2455 Hollywood Boulevard, Hollywood, Florida 33020 and was open from April 1976 to October 1976. MDG, Inc.'s principal place of business is in Buffalo.

6. A brief overview of the sales program of MDG, Inc. is necessary for a proper understanding of its business operation.

Diamonds are purchased from international manufacturers, wholesalers, agents and diamond exchanges. These diamonds are then assembled in packages of one to five diamonds and marketed. In 1976, MDG, Inc. sold 978 diamonds to 264 different customers in 38 states. MDG does not make solicitations to the general public. It finds potential buyers of diamonds by reviewing professional listings in the Yellow Pages, Dun & Bradstreet mailing lists, and other selected mailing lists. Once a potential buyer is located, MDG salesmen telephone first, and if he or she shows interest, they substantially mail him

or her some of the company's sales material. The sales material explains the technical aspect of diamond production, the workings of the diamond market, and the procedure followed in buying diamonds from MDG, Inc. It suggests that diamonds are a worthwhile investment since they provide an effective way to hedge capital against inflation. At the same time, the material makes clear that the future value of diamonds depends entirely on the diamond market.

From seven to ten days after the sales material has been mailed, an MDG, Inc. salesman usually telephones the potential customer and attempts to make the actual sale. Sometimes the sale is made during a subsequent telephone call. In addition to telephone sales, MDG, Inc. sells a very small quantity of diamonds over the counter and by mail.

Although MDG, Inc. only sells diamonds of the very highest quality ¹, the customer selects the size and number

¹ The quality of a diamond primarily depend on four variables: cut, clarity, color and size. MDG, Inc. deals only in the best, or "ideal" cut of diamond. Clarity is scaled from "flawless" to "inclusions", abbreviated FL, VVS1, VVS2, VS, SI, P. MDG, Inc. deals only with the top two categories -- FL and VVS1 -- which span a difference which can hardly be detected. Similarly, color ranges from colorless to yellow, abbreviated D through X on an alphabetical scale down to yellow. MDG, Inc. purchases the best commercially-available colors at G, H or I, or a .12 range by photometer. MDG, Inc. diamonds range widely in size from .20 to 1.0 carats.

of diamonds he wishes to purchase. Not only may the customer choose among five different packages prepared by MDG, Inc. but he may also request a specific package of two or more diamonds, which will be assembled according to his specification. MDG, Inc. charges a handling and processing charge of \$12.50 per package, whether the diamonds are bought in existing packages or in special packages. The customer sends a check for the entire purchase amount to MDG, Inc. before any diamonds are delivered. Diamonds are delivered weekly, and therefore, the check is held in a trust account at MDG, Inc.'s bank for at most seven days. There are no provisions for any installment sales or escrow accounts.

MDG, Inc. makes follow-up telephone contacts with its customers to solicit further diamond purchases, and during these conversations, the current state of the diamond market is usually discussed. With respect to any diamonds already purchased, however, the relationship between MDG, Inc. and its customers ends once the transaction is completed, with the exception that MDG, Inc. does offer assistance in further resales. First, in the event of customer dissatisfaction or for other reasons, and for a separate 4% fee, MDG, Inc. will attempt to find a purchaser on an individual basis for the diamonds it has sold. These purchasers are usually drawn from MDG, Inc.'s own list of potential customers. MDG, Inc.

performs this service only as an accomodation to good customer relations. Obviously, it is not in the interests of MDG, Inc. as a retailer, to make available one of its own potential customers to another seller. Second, MDG, Inc. intermittently publishes a newsletter, the "Diamond Digest", which covers the economic outlook of the diamond market and pertinent newsworthy items that might be of interest to its customers.

There are neither repurchase provisions nor any established resale program. MDG, Inc. never acts as custodian for diamonds nor does it make depository arrangements for customers.

This means that if a customer determines to sell his or her diamonds, he or she may do so at any time and in any manner which is available. MDG, Inc. makes no guaranties to the customer with respect to resales, and makes clear that the customer obtains full possession and control of the diamonds once they are purchased, with the sole right to dispose of them as he or she chooses. Customers use the diamonds not only for investment purposes, but also for personal use.

MDG, Inc. acts through no one but its own employees, some of whom work on a commission basis; it does not deal with independent brokers. The marketing of diamonds is MDG, Inc.'s only business.

THE UNLAWFUL SEARCHES AND SEIZURES.

7. The searches and seizures of which MDG, Inc. complains occurred in the following manner. On April 13, 1977, this Court (Curtin, U.S.D.J.) issued a search and seizure warrant for MDG, Inc. premises at 1629 Statler Hilton Hotel, which warrant commanded Federal law enforcement agents to search for and seize certain items specifically mentioned in the warrant, including business, personnel and financial records, customer lists, customer payments, records of mailing, corporate business documents, merchandise on hand, promotional literature, and other documents and items. This warrant, a copy of which is annexed hereto and marked Exhibit A, was executed on April 14, 1977, at 10:30 a.m. by postal inspector Ronald L. Snyder. As a result of the execution of this warrant a large number of documents and records belonging to MDG, Inc. were seized at its offices in Buffalo.

8. On April 13, 1977, this Court also issued another search and seizure warrant authorizing the United States Postmaster of Buffalo, New York and any United States Postal Inspector to seize and detain any and all packages containing diamonds delivered to the Niagara Square Postal Station located in Buffalo, New York. This warrant was executed on April 14, 1977 and resulted in the seizure of four registered parcels which were produced by Mr. William Fulcher of the Post Office

who had been served with the aforesaid search and seizure warrant. A copy of the above mentioned warrant and return are annexed hereto as Exhibit B.

9. On April 14, 1977, application was again made to this Court and the Honorable John F. Curtin again issued search and seizure warrants which directed and permitted any authorized Federal agent to search for and seize diamonds and any other property relating to MDG, Inc. which were contained in safe deposit box No. 123, Marine Midland Bank, Statler Hilton office, Buffalo, New York. This search warrant was executed on April 14 at 5:00 o'clock p.m. by Ronald L. Snyder, Postal Inspector, and resulted in a seizure of the contents of the safety deposit box aforementioned which consisted of numerous discs containing 74 diamonds and twelve white paper packets containing approximately 40 diamonds. Several other packages and/or diamonds were seized as is fully set forth in the return of this search warrant annexed hereto and marked Exhibit C.

10. Additionally, on April 14, 1977, this Court issued an order directing the Marine Midland Bank to freeze the bank accounts of MDG, Inc., No. 756-75037-7 and No. 756-75044-0, for a period of thirty days. A copy of this order is annexed hereto and attached as Exhibit D.

The account No. 756-75037-7, known as the MDG, Inc. operating account, contained a balance of \$33,436.10. The account No. 756-75044-0, known as the clients' trust fund, contained the amount of \$375,931.67. On May 13, 1977 that order was extended by Honorable John T. Elfvln for an additional thirty days. Application for that order was made ex parte even though the government was well aware that our firm represented MDG, Inc. since we had brought an application to unseal the search and seizure papers on April 25, 1977. It is respectfully submitted that such conduct on the part of the government typifies the manner in which this entire proceeding and the rights of this defendant have been regarded. This order is attached as Exhibit E.

11. Finally, on April 15, 1977, a search and seizure warrant was issued by the Honorable William G. Heffron, Justice of the Erie County Court, which authorized any United States Postal Inspector to enter the premises of the aforementioned Marine Midland Bank and to obtain the statements of the balances on account of the MDG, Inc., the identify of any and all checking and savings accounts or accounts of any kind in the name of MDG, Inc., any records and documents relating to said accounts, as well as any rental agreements, records of entry and records and documents of any kind relating to any safety deposit boxes. This warrant was executed the same day and

resulted in the seizure of funds in the savings account of MDG, Inc. account No. 756-44532-9, which totalled \$20,625.31. There were also numerous copies made of safety deposit admittance slips, certificate of resolution of safe deposit box No. 451, and other documents relating to safe deposit boxes and checking accounts. A copy of the aforementioned warrant and return is annexed hereto and attached as Exhibit E.

12. As a result of the aforementioned search and seizure warrants, assets and bank accounts belonging to MDG, Inc. in the amount of \$429,993.08 were seized, along with over 129 diamonds of substantial value. The practical effect of these unlawful seizures has been to put MDG, Inc. out of business.

13. It is significant that at the present time, MDG, Inc. has not been charged with the commission of any crime in the United States by indictment or otherwise. No arrests have been made in the United States of any officers or directors of MDG, Inc., or its employees or agents. Moreover, upon information and belief, the property which was seized has not been presented to the United States Grand Jury for consideration, nor have any individuals associated with MDG, Inc. been called to testify before any United States Grand Jury. It is respectfully submitted that there is no need, as a practical matter, for the government to take these

actions since the company has been destroyed by the seizures.

THE INACCURATE, FALSE BASIS FOR THE WARRANTS.

14. When a search and seizure warrant is issued based upon false and inaccurate information, the subsequent seizure is invalid and this Court may inquire as to the basis of the information underlying the warrants. Upon information and belief and based upon a personal examination of the books and records of our client in Toronto the facts and information contained in the affidavit of Ronald L. Snyder which formed the sole basis for the warrants are false and misleading.

15. An examination of the affidavit of Ronald L. Snyder reveals that it is replete with inaccuracies, mis-statements and false information.

16. The entire affidavit is based upon hearsay information.

Mr. Snyder states that on April 5, 1977, he commenced an investigation into certain alleged violations of mail fraud and conspiracy statutes by various individuals doing business as MDG, Inc. His investigation, however, consisted solely of conversations with Corporal Ross Kozats, Commercial Crime Section, Royal Canadian Mounted Police (RCMP), Toronto, Ontario, Canada. No affidavit of Corporal Kozats was furnished.

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These conversations took place on April 5 and April 7, 1977. Interestingly, only eight days after this investigation of this complex business operation was begun, Mr. Snyder made applications for the above described warrants. And while Mr. Snyder relates that the RCMP had been involved in an investigation of the retail diamond investment business in Toronto for the last two years, there is no indication as to how long Merchant Diamond Group, Ltd. in Toronto was under investigation. The Snyder affidavit is annexed hereto as Exhibit G.

17. The affidavit is inaccurate, if not false, relative to its allegation as to the principals of the company and their backgrounds. Thus, on page 2 of his affidavit, Mr. Snyder states that Al Lindzon, Stanley Harold Bader and Harold Eric Smith were principals and participants in the company. He then states that these individuals were convicted in May 1976 of conspiracy to defraud the public in violation of Section 423.1(d) of the Criminal Code of Canada. Stanley Harold Bader and Harold Eric Smith are no longer associated with MDG. Approximately one year ago, Bader left Merchant Diamond Group, Ltd. and as of December 14, 1976, Smith was no longer associated with MDG. However, even reference to Alan Lindzon, who is still active in the business, does nothing to further any inquiry into the legality of the business of MDG, Inc. The reference to Mr. Lindzon's conviction for

conspiracy to defraud the public is obviously inserted merely for its prejudicial effect and is not a fact constituting probable cause for the issuance of search warrants. The statements that Bader and Smith are still associated with Merchant Diamond Group, Ltd. are clearly false.

18. The allegations in the Snyder affidavit relating to the quality of the diamonds is also inaccurate. Mr. Snyder relates the following (Exhibit G, p. 2):

"The RCMP advises that the scheme involves the purchase by Merchant Limited of cut and polished diamonds of widely varying quality at wholesale prices. These diamonds are in turn sold at retail prices to customers throughout the United States and Canada."

This allegation contains no basis in fact. The diamonds which Merchant Limited sells to its customers are not of widely varying quality. These diamonds are, in almost every instance, of VVS1 quality.

This deponent has personally examined invoices of various suppliers and those invoices reveal that the diamonds are, in fact of VVS quality. Before diamonds were sold, they

were appraised and those not meeting this standard rejected.

Moreover, there is no factual basis set forth for the statement that the diamonds were of widely varying quality. The RCMP does not advise that it personally examined the diamonds in question. The bald statement contained in the Snyder affidavit is without foundation.

The statement that these diamonds are sold at retail prices is also inaccurate. In reality, while MDG is essentially a retailer of diamonds, in most instances, the diamonds sold to customers are sold at less than the retail price. In any event, the statement that these diamonds are sold at retail prices cannot in any way be termed a fact which might show illegality.

19. The crux of the Snyder affidavit, however, are the alleged misrepresentations which our client's salesmen made to potential customers.

According to the Snyder affidavit, these representations were garnered by virtue of electronic surveillance conducted from February 2 through March 31, 1977 whereby the RCMP intercepted in excess of 1,000 telephone calls of Merchant Diamond Group, Ltd. salesmen².

² Upon information and belief, the disclosure of the RCMP wiretap information is in violation of the Canadian Protection of Privacy Act, Snow's Crim. Code, §178.1-178.23 (1974).

Snyder fundamentally sets forth four alleged misrepresentations.

(a) Alleged misrepresentation 1.

The diamonds being offered to the customer will, based on past performance, appreciate in value at the rate of 33%-60% per year.

It is claimed by the RCMP, through Snyder, that this is because one Robert Arend, a member of the Gemological Institute of America, is of the opinion that the maximum rate of appreciation is between approximately 8%-9% per year. Additionally, the RCMP was advised by Mr. Arend that this rate of appreciation applies to raw, uncut diamonds which appreciate in value at a faster rate than the cut and polished diamonds of MDG, Inc. These statements are simply inaccurate. In fact, diamond prices have gone up dramatically in recent years. Annexed hereto as Exhibit H are copies of articles and a schedule of same from numerous respected publications with a brief synopsis of the conclusions drawn in each. Generally, it can be stated that, since the early 1950's, diamond prices have gone up at least 300% and that in the future, there will be a marked rise in their value. As an example, attached as Exhibit I is a letter from The Diamond

Registry showing an increase in value in the last ten years of approximately 600%.

Additionally, this deponent has examined the invoices of various suppliers of diamonds to MDG. These invoices reveal that MDG has itself paid more per carat for diamonds as time goes on. For example, on November 23, 1976, MDG purchased diamonds from R & M Diamonds located at 16 Westgrove Crescent, Toronto, Ontario. For a one carat diamond, they paid \$1,902. On March 28, 1977, MDG paid \$2,118 for the same quality and size of diamond (one carat). Therefore, in just over four months, the price per carat for a one carat stone rose \$216, or approximately 11%. Moreover, an invoice from Belles Bijoux Ltd. dated September 8, 1976 reveals that MDG paid \$690 per carat for 1/2 carat stones. The R & M Diamonds invoice of March 28, 1977 indicates that the price per carat, for 1/2 carat stones, was \$950 per carat. This is an increase of \$260 in approximately six months, which amounts to a 37% increase in the wholesale price of diamonds. Said invoices are attached collectively as Exhibit J. Although these figures are, in effect, somewhat variable, depending upon the buyer used by MDG and the type of business arrangement MDG might have had with a particular supplier, these invoices do, in fact, show an average rise in the price of diamonds which is substantially greater than Mr. Arend's quoted 8%-9% per year and approximate the 30%-60% claimed to be false.

It is significant that the above records of invoices are currently in the possession of the RCMP and it is respectfully pointed out that the United States Law Enforcement authorities, apparently working in conjunction with the RCMP, could have had access to these records. Upon information and belief, such data was available prior to the execution of the Snyder affidavit.

It is therefore respectfully submitted that the alleged opinion of Mr. Arend is totally unfounded. It was blatantly improper for such an assertion to form the basis for probable cause. It is respectfully submitted that the inaccuracy of Mr. Arend's opinion is, by itself, sufficient grounds for this Court to question the accuracy of its previous finding of probable cause.

(b) Alleged misrepresentations 2 and 3.

There is a ready market for the resale of diamonds so that the customer may liquidate his diamond holdings at will.

Merchant Limited will buy back at prevailing retail prices any diamond purchased from it.

These alleged misrepresentations should be considered

together. They actually deal with the representations of MDG, Inc. as to the liquidity of the diamonds it sold to the public. MDG simply informed its customers that they would receive assistance in selling its diamonds should they choose to do so. This was upon the condition that the diamond would be sold at the prevailing price for the diamond less 4% to cover MDG's expenses.

Moreover, from a personal examination of the buy-back records of MDG, it can be stated that MDG's "buy-back" policy was consistent with the representations it made in respect to it.

In 1976, for instance, MDG bought back \$229,789 worth of customers' diamonds in Canada, and \$14,912 of U.S. customers' diamonds, totalling \$244,701. In 1977, the buy-back figures for U.S. customers was \$48,208, and for Canadian customers it was \$107,730. More importantly and in clear contradiction of the statement that only "ten buy-backs" had occurred during the period of electronic surveillance from February 2 to March 31, MDG bought back diamonds from 42 customers.

Moreover, that Gerald Doren may have been electronically intercepted while telling the manager of MDG's Toronto office that "buy-backs" should be limited to 7% of sales cannot

be used as any basis for an allegation of misrepresentations as to buy-back policy. That buy-back sales should be limited to 7% of total sales is simply good business judgment. Any good salesman after marketing his product will attempt to limit instances in which refunds on his product are sought. It would simply be bad business to allow any customer calling for a buy-back to, in fact, enter into such an arrangement.

There is, therefore, no factual basis for the allegation relating to such alleged misrepresentations. It is respectfully submitted that the facts as set forth above warrant this Court's further inquiry into the accuracy of Mr. Snyder's information and to re-examine the finding of probable cause previously made.

(c) Alleged misrepresentation 4.

The appraised value of the diamonds sold to the customer will be determined by an independent gemologist who is a member of the Gemological Institute of America.

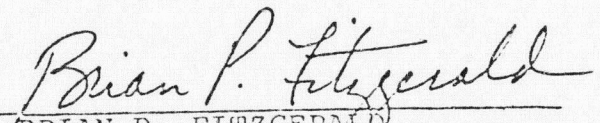
MDG simply does not represent that the diamonds will be appraised by an independent gemologist who is a member of the Gemological Institute of America. The current appraiser for MDG is Theodore J. Caldeira. Mr. Caldeira possesses

a certificate from the Gemological Institute of America which states that he has passed a diamond grading and evaluating course offered by the Institute. A check of the records of the Gemological Institute by this deponent's office indicated that Mr. Caldeira was indeed qualified to represent that he had a certificate in diamond grading and evaluating. The statement in the Snyder affidavit that Mr. Caldeira is not listed as a member is therefore highly misleading. In effect, it is totally improper for this assertion to have been made since an individual cannot be a "member" of GIA. Individuals can be graduates of GIA if they have taken all of GIA's courses and passed them or they can be certificate holders such as Mr. Caldeira. It should be pointed out that Mr. Caldeira possessed a certificate for diamond grading and evaluating which is specifically what he did for MDG. Additionally, it should also be pointed out that Mr. Caldeira received remuneration for his appraisals on a per diamond basis. His remuneration was at a fixed rate and did not depend upon the ultimate appraisal price which he put upon a particular diamond. Mr. Caldeira was an independent appraiser and his credentials are impeccable.

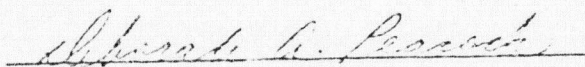
20. This motion is brought on by order to show cause because of the irreparable harm sustained by MDG, Inc. by virtue of this seizure. It was not until June 1, 1977 that

I was able to examine the records of MDG seized by the RCMP. Those records set forth much of the basis for the allegations set forth herein.

20. It is respectfully submitted that this Court's previous finding of probable cause was based upon inaccurate, misleading and false representations by the government. Accordingly, it is respectfully requested that this Court order the property of MDG, Inc. returned to it pursuant to Rule 41(e) or, alternatively, order a hearing to inquire into the validity and accuracy of the affidavit of Ronald Snyder.


BRIAN P. FITZGERALD

Sworn to before me this
8th day of June, 1977.



DEBORAH A. PEACOCK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

<u>PUBLICATION</u>	<u>DATE</u>	<u>STATEMENT FROM ARTICLE</u>
1. Jewelers' Circular-Keystone	May 1977	Jewelers paid anywhere from 7% to 15% more for diamonds than in early March. Melee in general soared 26%.. As a result of shortages in some sizes, polished goods may fetch a good deal in excess of that.
2. Jewelers' Circular-Keystone	April 1977	On March 8, DeBeers announced a sharp 15% increase in the overall cost of its rough. ...dealers will almost certainly boost prices for small goods melees especially as much as 20%. Since the beginning of 1977 alone...prices for 8- to 18-point melee goods have shot up 15%.
3. Forbes	April 15, 1977	For diamonds, it (the price) has been ever upward. For a fine one-carat diamond, the wholesale price has moved from \$5200 in 1974 to nearly \$7500 this year, a 44% increase.
4. Wall Street Journal	March 9, 1977	...the overall increase will 15%... It (DeBeers) attributed the price rise to "good demand" for diamonds.
5. U.S. News and World Report	Feb. 7, 1977	Gems...have continued to advance in value with no real setback and many experts think the trend will continue, with increases averaging 15% or more a year. Gems are an excellent investment if you are looking for something both enjoyable and marketable. Political upheaval...could curtail output. If that happens gems will look even better in the future to the careful investor.

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<u>PUBLICATION</u>	<u>DATE</u>	<u>STATEMENT FROM ARTICLE</u>
6. U.S. News and World Report	July 12, 1976	A good diamond...fetches 7 times as much as it did in 1967. Prices are up 15% this year alone. Currently pushing prices higher are heavy buying of diamonds by Japanese investors and gold's fall from favor. Experts warn widows and divorcees who sell nuptial rings to remember the gems are worth much more than when bought.
7. Business Week	May 3, 1976	...independent gem experts say that price increases have a lot further to go. ...predicts a minimum gain of 150% to 200% for many precious stones over the next five year
8. Gentlemen's Quarterly	April 1976	Diamonds...are prized because their price fluctuates less than that of any other precious material, including gold. ...during the 60's, one of the most lucrative periods in Wall Street's history, wholesale diamond prices rose nearly twice as much as the Dow Jones Average.
9. Business Week	March 29, 1976	...jewels offer the potential for substantial appreciation and a good hedge against currency devaluation and inflation.
10. Moneysworth	Feb. 16, 1976	...will cause...DeBeers to raise diamond prices substantially later this year. ...a rate of increase for better than that of most dividend-paying securities.
11. Wall Street Journal	Dec. 17, 1975	Diamond prices are going up again.

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PUBLICATION

DATE

STATEMENT FROM ARTICLE

12. Reader's Digest

Oct. 1973

...a diamond of good quality,
...is as safe an investment
as can be found.

13. Financial World

The last decade has seen the
price of fine one-carat diamonds
rise by some 350%, but much of
that increase has come in the
last couple of years.

...the price...appears to be
rising by 10% or so every few
months.

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Diamond prices to go higher

by David Federman
JC-K Associate Editor

De Beers' March 23 price hike began to take a heavy toll in early April. Jewelers paid anywhere from 7% to 15% more for diamonds than in early March. They will most likely be paying more by May, especially for lesser quality small goods.

Although De Beers announced an overall 15% increase, that figure is a bit deceptive. The latest increase was aimed primarily at small goods. Indian cutters—the hardest hit by the jump—paid almost 70% more for their small rough, according to Ted Baumgold, Baumgold Bros., N.Y. Melee in general soared 25%. Even more deceptive is the fact that these percentages refer to De Beers' official price rises for rough. As a result of shortages in some sizes, polished goods may fetch a good deal in excess of that.

Consequently, many dealers have boosted prices in stages—anywhere from 8% to 15% for starters. Some plan to jump prices in one fell swoop once they gauge the full impact of the Syndicate's latest move. Meanwhile, they've posted small interim hikes.

"I'm living from day to day," says Gerard Tugendhaft, Taché USA, New York. "Dealers in Antwerp, Tel Aviv and Bombay are already paying 25% more for polished goods. In fact, dealer demand is so great I can make more selling to them than to jewelers and wholesalers."

That's because supplies of small stones have all but dried up.

"European melee makers are holding back goods," says Leo Kaplan, Lazare Kaplan International, New York. "So we're seeing great competition for the little that is available."

This shortage has hurt some deal-

ers here. One of them is Charles Selon, Charles Selon & Associates, Chicago:

"I have a standing order with a dealer for about 200 carats a month of small and full cut stones up to 10 points," Selon explains. "In March, before the last sights, he jumped prices from \$178 a carat to \$235 and cut me to a ration of 31 carats. I called him and said, 'Hey, what gives?' 'Please, Chuck, don't give me a headache,' he answers. 'That's all I've got to spare.' Then, in early April, he wants \$255 a carat and sends on 56 carats. I've just never seen anything like this. It's enough to make you want to leave this business."

In comparing prices for the full year however, JC-K indexes show that the five-pointers escalated less than the larger sizes. The five-pointers charted, for example, increased only about 10% in the year. Quarters went up by more than a third in value.

JC-K diamond index—keystone prices

Keystone prices of diamonds retailers regularly buy, as reported by a cross section of typical dealers. Most price variations are due to "make"—but slight color variations can be extremely important.*

Carat weight	description (GIA terms)		price range per stone	median price per stone		
	color	clarity		April '77	March '77	April '76
.05 ct.	G-J	VS ₁	\$23.72-\$40	\$29.48	\$27.50	\$27
.25 ct.	G-J	VS ₁	\$148.50-\$317.50	\$250	\$217.50	\$180
.50 ct.	G-J	VS ₁	\$605-\$1025	\$843.70	\$767	\$725
.75 ct.	G-J	VS ₁	\$1061-\$2165	\$1700	\$1650	\$1460
1.00 ct.	H-J	VS ₁	\$2215-\$5055	\$3800	\$3550	\$3150
1.00 ct.	D	FL	\$10,500-\$17,730	\$16,643	\$14,400	\$12,400
2.00 ct.	D	FL	\$30,740-\$69,284	\$58,800	\$53,200	\$40,000

*Gemological Institute of America color grades: D—colorless; G-J—traces of color visible in larger stones. Clarity: FL—no blemishes; VS₁—very slightly included.

JC-K colored stone price index

Current prices jewelers regularly pay dealers for their medium to better quality stones as reported by 15 typical importers.

gemstone	price range per carat	median price per carat		Change from April 1973
		April	March	
amethyst, 10 ct.	\$15-\$18.50	\$15	\$15	+\$1.50
aquamarine, 8 ct.	\$75-\$250	\$112.50	\$100	+\$12.50
cat's eye, 5 ct.	\$750-\$1500	\$1200	\$1150	+\$150
citrine, 10 ct.	\$7-\$8	\$8	\$10	+\$3
emerald, 1 ct.	\$1750-\$5000	\$2750	\$3000	+\$250
garnet, green, 1 ct.	\$400-\$600	\$475	\$500	+\$25
man's sky blue star, 10 ct.	\$250-\$450	\$325	\$325	+\$75
opal, black, 3 ct.	\$350-\$550	\$425	\$450	-\$25
opal, white, fiery, 5 ct.	\$50-\$92.50	\$70	\$62.50	-\$5
peridot, 10 ct.	\$45-\$60	\$50	\$50	+\$5
ruby, 2 ct.	\$1400-\$3500	\$2000	\$1625	+\$375
sapphire, 2 ct.	\$425-\$1500	\$300	\$700	+\$400
tanzania, 5 ct.	\$250-\$300	\$275	\$237.50	+\$37.50
tourmaline, green, 10 ct.	\$35-\$100	\$55	\$55	N.C.
tourmaline, pink, 10 ct.	\$30-\$125	\$66.25	\$90	+\$23.75

GEMSTONES

De Beers hikes prices 15%

On March 8, De Beers announced a sharp 15% increase in the overall cost of its rough. It is the largest price jump since March 1951.

As a result, jewelers will be paying at least 15% more for many goods by April. And, from the looks of things, dealers will almost certainly boost prices for small goods—melees especially—as much as 20%. In fact, some dealers jumped the gun on De Beers and hiked prices for small goods a few days before De Beers' announcement.

But even they were shocked by the size of the increase.

"I lifted prices about 10%," says Dick Swaabe, Diamond Sales Co., Miami. "But I never thought De Beers was going to say 15%."

Actually, there were abundant signs that a hefty jump was coming.

"Since the beginning of 1977 alone," says Fred Claar, Claar Brothers, New York, "prices for 8- to 18-point melee goods have shot up 15%. They've been

gobbling them up in Antwerp and Tel Aviv. And now we're going to feel it here."

And how. De Beers latest price increase comes six months after the last small-by-comparison one in September. At that time, the Syndicate hiked rough 5.7%. But that was only an average. Small rough pole-vaulted 20%. This means that by April small goods will be 35% more expensive than they were last summer. And jewelers will have to absorb a lot of the latest jump all at once.

Things might have been different had De Beers not delayed making official what was already obvious to many dealers. According to dealers, at the last four sights (sales of rough by the Syndicate), De Beers skimped a bit on quality and quantity. But although its boxes contained less, dealers still paid the same prices for them. So, in effect, they were paying more for less.

"It's hard to explain that to your

by David Federman
JC-K Associate Editor

customers," says Fred Claar. "Diamond prices aren't like gold prices. When gold went from \$130 to \$145, as it did recently, a manufacturer can justify higher prices just by opening a daily newspaper. But until De Beers sends the cable announcing higher prices, the diamond dealer has nothing to justify his prices."

At present, the seemingly insatiable global appetite for melee is confined mostly to imperfect goods.

"The rise in price for very fine melee has been nowhere near as great," says Ted Baumgold, Baumgold Brothers, New York.

Some dealers are starting to take advantage of this fact.

"We point out to customers that the price difference between fine and poor is the least it has been in some time," explains Willy Engelhart, Charles Engelhart, Chicago. "When they see it from that standpoint, many buy better goods. It's really like getting a bargain."

JC-K diamond index—keystone prices

keystone prices of diamonds retailers regularly buy, as reported by a cross section of typical dealers. Most price variations are due to "make"—but slight color variations can be extremely important.*

Carat weight	description (GIA terms)		price range	median price per carat	
	color	clarity	per carat	March	February
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.25 ct.	G-J	VS ₁	\$123.50-\$317.50	\$217.50	\$216.50
.50 ct.	G-J	VS ₁	\$550-\$1025	\$737	\$767
.75 ct.	G-J	VS ₁	\$1250-\$2160	\$1650	\$1543.50
1.00 ct.	H-J	VS ₁	\$2094.76-\$4600	\$3550	\$3450
1.00 ct.	D	FL	\$9000-\$17,730	\$14,400	\$14,700
2.00 ct.	D	FL	\$35,000-\$52,230	\$53,200	\$52,000

*Gemological Institute of America color grades: D—colorless; G to J—traces of color visible in larger stones. Clarity: FL—no blemishes; VS₁—very slightly included.

JC-K colored stone price index

current prices jewelers regularly pay dealers for their medium to better quality stones as reported by 15 typical importers

gemstone	price range	median price per carat		change from March 1973
	per carat	March	February	
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aquamarine, 8 ct.	\$75-\$225	\$100	\$100	N.C.
cat's eye, 5 ct.	\$700-\$1500	\$1150	\$1150	+\$100
citrine, 10 ct.	\$5-\$10	\$10	\$10	+\$5
emerald, 1 ct.	\$1900-\$5000	\$3000	\$3000	+\$1300
garnet, green, 1 ct.	\$400-\$600	\$500	\$500	+\$75
man's sky-blue star, 10 ct.	\$275-\$450	\$325	\$325	+\$100
opal, black, 3 ct.	\$350-\$550	\$450	\$450	N.C.
opal, white, fiery, 5 ct.	\$50-\$65	\$62.50	\$62.50	-\$12.50
pandora, 10 ct.	\$45-\$80	\$50	\$50	+\$5
ruby, 2 ct.	\$1100-\$3500	\$1625	\$1625	+\$125
sapphire, 2 ct.	\$400-\$1000	\$700	\$700	N.C.
tsavorite, 5 ct.	\$250-\$325	\$237.50	\$237.50	+\$37.50
tourmaline, green, 10 ct.	\$40-\$100	\$55	\$55	N.C.
tourmaline, pink, 10 ct.	\$75-\$125	\$80	\$80	+\$10

Now, The Diamond Bugs?

Diamonds for investment are being pushed as prices go up. But in this market it is the losers who are forever.

DIAMOND DEALERS are hoping there are more Don Dunseaths in this world. The owner of an Arizona trailer park, Dunseath rounds out his investment portfolio of Treasury bills with diamonds he buys at a local auction house. Dunseath's collection includes diamonds said to have been owned by the late columnist Walter Winchell and a four-carat diamond ring Dunseath purchased in 1974 for \$5,500. A jewelry firm told him it would now retail for \$13,500. "I'm a conservative investor and I'm quite satisfied with my amonds," says Dunseath.

Search parties are out looking for more people like Don Dunseath. There are auction houses selling diamonds from "famous estates"; mail-order firms hawking raw diamonds by the bag from "world-famous South African mines"; fly-by-night telephone boiler-room operators selling them by the box; California commodity brokers designing a diamonds mutual fund.

Even long-established jewelers like F.J. Cooper, a Philadelphia fixture since 1883, are claiming that diamonds "represent an exceptional hedge against inflation." In the past two years, some 30 brokers specializing in diamonds for investment (they charge a commission of 5% to 30% to buy or sell a stone) have opened TV-scanned alarm-wired offices across the country.

Franz Pick, publisher of Pick's Currency Yearbook and a gold bug's gold bug, now sounds like a diamond bug. Pick speaks of diamond prices first these days to visitors at his Wall Street office. Gold prices, of course, have ping-ponged in the past two years from \$190 an ounce to \$103, and then back to \$150. For diamonds, it has been ever upward, says Pick. The Treasury Department, he points out, isn't concerned with holding diamond prices in line.

For a fine one-carat diamond, the wholesale price has moved from \$5,200 in 1974 to nearly \$7,500 this year, a 44% increase. Prices of top-quality diamonds have nearly tripled since 1970.

Pick glosses over the fact that diamonds have had peaks and valleys like

gold. There was a big break in the retail market between 1959 and 1962, when prices of the better stones fell as much as 25%. During 1975 and most of 1974 De Beers Consolidated Mines Ltd., which controls 85% of the world's rough diamond sales, did not raise prices. At retail, diamonds were being marked down dramatically. Some short-term buyers of large inventories were also burned.

Over a longer term, investors like Dunseath may feel they've registered a solid profit on their diamonds in terms of retail prices. But the big question remains: Can they sell at retail? The only assured price in the diamond market is the wholesale selling price for roughs set by De Beers (which itself has produced its rough stones for both industrial and gem use for perhaps \$15 a carat). In between that and the retail price are markups for a wide range of middlemen, in-

cluding cutters, dealers and jewelry manufacturers. Typical retail prices are double wholesale.

Average investors, unfortunately, have little access to the wholesale market. Ask a jeweler to buy back a stone, and he'll often begin by quoting a price 30% or more below wholesale. For he must move the stone out again at a markup, or sell it in a fast-moving market like New York City's Diamond Row along West 47th Street. Pricing is a private affair in the Diamond Dealers Club there and in a dozen or so other clubs and bourses that thrive in diamond centers like Antwerp, London, Johannesburg, Bombay and Tel Aviv.

George Kaplan, vice chairman of Lazare Kaplan International, one of the nation's largest diamond cutters and a publicly traded company, advises investors to search out a well-established local jeweler. Some jewel-

**A Dealer's Window On New York's Diamond Row Last Month:
But it's not easy for buyers to obtain a true wholesale price.**

Simpson's Terrific Display light and fine 2160	Over 4 cts white 1250	High 1800
Simpson's Ball of Fire! approx. 3 cts 970	Simpson's Excellent Ruby! approx. 4 cts 233	Simpson's Gem of Gems total purity! 2670

buy-back agreements, but they can be dicey. "The agreements are often a sham," says Kaplan. "They'll only give you full credit on a larger purchase of diamonds. What kind of a favor is that?" How about trying the new diamond investment brokers who say they can buy it for you wholesale? The

De Beers' Central Selling Organization in London moves its inventory. De Beers itself is feeling a variety of cost-push pressures. At home, local diamond miners are seeking higher pay. Because of the turmoil throughout Africa, De Beers stock is selling at only 3.

Then there are the Russians. They

"... Caveat emptor is the rule in the diamond market. 'I've never seen two experts agree on a particular diamond,' says Crowningshield..."

broker may well have an agreement to buy from a cutter or De Beers' syndicate member, but the "wholesale" price the broker quotes you may not be much below retail. The buyer also must be careful he isn't buying flawed diamonds offered as flawless gems.

Caveat emptor is the one eternal rule in the diamond market. The basic measure for investment pricing is the top-quality stone, usually around one carat, colorless and flawless, usually round cut. "But I've never seen two experts agree on the quality of a particular diamond," says Robert Crowningshield, New York director of the Gemological Institute of America. The GIA trains jewelers to recognize the over 100 different grades of diamonds, which are cut from some 2,000 categories of roughs. Its laboratories will also provide a certificate of a diamond's qualities—provided the stone a jeweler shows you is really the one described on the certificate.

As diamonds and the experts' judgments of them vary widely, so do prices. The trade magazine *Jewelers' Circular-Keystone* polled a group of retailers recently and found they were paying \$9,000 to \$17,730 for one-carat, flawless, grade D (colorless) diamonds. Prices on very slightly imperfect (VSI) grades H to J were far down the price scale to \$2,094 to \$4,600 a carat. "Diamonds are not an investment, unless you're a promoter or very anxious, like a Rhodesian farm owner," says Crowningshield.

What real push there is in the past couple of years in the diamond investment market has been coming largely from anxious foreigners. Italians, Britons and Argentinians, among others, have been buying diamonds as an inflation hedge or to protect against a currency devaluation.

De Beers too may well have been doing some hedging last month when it raised the price of raw diamonds by an average of 15%. The boost, the largest for De Beers since 1967, will have to be absorbed first by the some 275 syndicate buyers through whom

have boosted their own diamond production above 12 million carats a year, outdistancing the South Africans in total diamonds, if not gemstones. The CSO quietly merchandises most of the Russians' rough diamond export. Needing foreign exchange, the Russians persistently have urged De Beers to jump its prices.

After the 1967 increase, it took De Beers four more years before it could move its price up by as much as 5% again. Has the company jumped too

far this time? There are signs foreign demand is tapering off. "We are seeing fewer foreign buyers now at the Diamond Dealers Club," says Joseph Schlusell, a club member and broker. "Their recessions are taking a toll."

Higher prices don't mean better quality diamonds, either. The larger, top-quality stones are becoming harder to find, even in Russia. So far, De Beers always has been able to find new production. But the chances are that in the next few years, at least, U.S. investors will be urged to buy smaller, flawed diamonds with promises of faster appreciation than in larger diamonds. The chances also are U.S. investors will be taken.

Given the variables in diamonds, it may be that Lazare Kaplan, who at 52 cut the famous Jonker Diamond of 726 carats and who at 93 is still active in the family business, has the last, best advice for would-be diamond bugs. "A diamond," he says, "is to enjoy all your life and then *maybe* sell for more money. If you keep it in a vault, a diamond is just another piece of goods." ■

Enjoy: Still cutting stones at 93, Lazare Kaplan says diamonds are to be seen and enjoyed, not tucked away with coupon bonds in a vault.



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De Beers's '76 Net Set High; It Boosts Prices for Diamonds

By a WALL STREET JOURNAL Staff Reporter

LONDON—De Beers Consolidated Mines Ltd. announced record 1976 net income and a 15% price rise for diamonds marketed through its Central Selling Organization.

Net income jumped 40% to the equivalent of \$354.8 million from \$253.7 million computing the South African rand at its current value. The diamond account and other revenue climbed 74% to \$516.4 million from \$297.6 million.

The price increase, effective March 28, will vary over the vast range of rough gem diamonds marketed by the Central Selling Organization on behalf of various producers, De Beers said. But in effect, it added, the overall increase will be 15%, the largest boost since March 1951, except for "adjustments" to take account of currency devaluations.

De Beers is the world's biggest diamond producer, and about 85% of all diamonds are marketed through its sales organization.

It attributed the price rise to "growing demand" for diamonds. Its quotes were boosted 3% in January 1976 and 5.75% last September.

Honeywell Discussing Sale of Certain Assets To Bell & Howell Co.

By a WALL STREET JOURNAL Staff Reporter

MINNEAPOLIS—Honeywell Inc. said it is discussing the possible sale of certain assets of its photographic products division to Bell & Howell Co.

Major assets in the proposed transaction

GEMS: A GOOD HEDGE AGAINST INFLATION?

IN THE SEARCH for investors that consistently stay ahead of inflationary spiral, there is one that is getting increased attention—gems.

A look at the better-known alternatives shows why:

Stocks, on the whole, are just a little more valuable today than they were in early 1966.

The real-estate market has done somewhat better, but the collapse of condominium prices in such places as Florida and Maryland has shown that it is no sure-fire bet either.

Gold, after rising to nearly \$200 an ounce, has plummeted to the point where it is worth less than 70 per cent of its 1975 peak price.

Gems, on the other hand, have continued to advance in value with no real setbacks, and many experts think the trend will continue, with increases averaging 15 per cent or more a year.

A big rise. Five years ago, the price of top-quality aquamarine was \$50 a carat. Today, the same stone may fetch \$200 to \$400 per carat.

In 1950, a flawless 1-carat diamond would wholesale for \$850. By 1973, its price was up to \$2,000. Since then, it has trebled to about \$6,000 a carat.

This steady rise makes gems look like an ideal investment, but the problems involved in buying them have deterred most people. Joel Aram, mineralogist and author of "Gems and Jewelry," says: "It's a complex business, strictly 'buyer beware.'"

The first questions the investor has to settle are which gems to buy, and how much to spend. For investment purposes, a spokesman for the Diamond Information Center in New York advises sticking to large, fine-quality stones—1 to 1½ carats or more—because they are much rarer than smaller ones and appreciate faster in value.

Gems are graded according to color, clarity (absence of flaws), type of cut and carat weight. Color and clarity are the most important features.

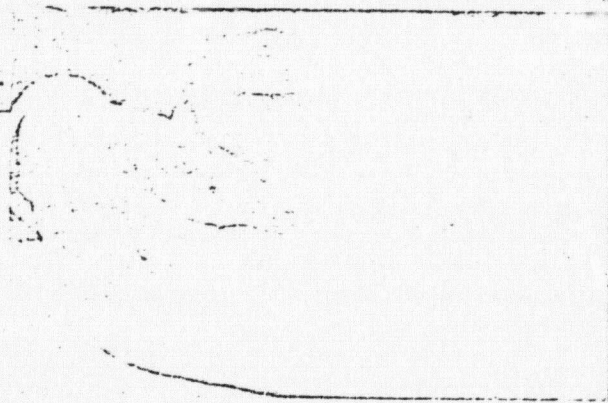
Top-quality diamonds, emeralds and rubies are all wholesaling for \$6,000 per carat and up. Very slightly flawed stones cost about 10 to 20 per cent less.

An investor, therefore, should expect to spend at least \$5,000 to \$10,000 for any of these gems.

Fine sapphires wholesale for about \$2,000 per carat. But there are a number of other stones, including opal, spinel, tourmaline and amethyst, that usually are available for several hundred dollars per carat.

Experts caution that the investor needs to be sure he's getting the real thing. According to Joel Aram: "The authenticity of a gem cannot be determined with the naked eye." Synthetics and fakes can only be detected by a professional gemologist or gem laboratory, Aram warns.

The investor can get a certificate of authenticity from a reputable dealer, or



Most gems end up set in jewelry, but many experts advise buying large, loose cut stones for investment purposes.

he can send a stone to an office of the Gemological Institute of America, which will authenticate it for a fee.

Having documentation is crucial when the time comes to resell a gem. And the experts advise: Don't expect to clean up in a few months or a year. Says Mitchell Gilbert of *Jewelers' Circular-Keystone* magazine, "Gems are an excellent investment if you are looking for something both enjoyable and marketable. If you are just intending to buy and sell, it's better to stick to real estate."

Where to buy is nearly as crucial a decision as what to buy. For the serious gem collector, there are four or five directions in which to turn—

- Retail jewelers. They are convenient and offer large selections. But they also are quite likely to charge about double the wholesale value of a stone, and Peter Elder, who supervises the Beers diamond account in New York, notes, too, that a relatively large spread

what a person spends in a retail store is likely to go for the setting. For both reasons, it will probably be more difficult to realize a substantial profit when the item is resold.

- Estate sales and auctions handle rather valuable gems, but it takes considerable knowledge of values to operate in this market.

- Brokers can be hired to buy and sell. Their fees are often much less than the retail markup, and they can provide expert advice. A number of firms also maintain inventories of gems certified by the Gemological Institute of America.

- Hobby shows organized by the "rockhounds" sometimes have unusual stones such as andalusite, iolite and scapolite that can be quite valuable.

Not necessarily real. From the experts come some additional pointers:

Nearly all gems can now be manufactured in a laboratory. These synthetics have the same chemical composition, hardness and colors as their natural counterparts, but sell for a fraction of the cost. A microscopic examination by an expert is sometimes the only way to tell the difference.

Gems can also be heated, irradiated, stained or dyed a more desirable color. Turquoise, for example, is in such heavy demand that unscrupulous dealers dye any number of stones to resemble it. They also dye lower-quality turquoise a deeper, more valuable shade of blue.

Altered stones can be detected by an expert and won't be worth much.

Gems are easy to transport and store. Unless kept in a safety deposit box, they are also relatively easy to steal and resell. On very valuable stones, insurance is a must.

Money invested in stones bears no interest. To produce a profit, the gems must appreciate more rapidly than a savings account earning more than 6 per cent a year or a good-grade bond that may easily earn 8 per cent with little risk.

Is there any danger that gem prices will stop going up? Not in the foreseeable future, the experts all agree.

Scarcity is one of the chief reasons for the high value of fine gems, and it appears that they are going to become even scarcer in the future. Very few major gem deposits have been discovered in the last generation.

By some estimates, all known diamond deposits will be depleted in the next 20 to 40 years.

Fine rubies and sapphires are even scarcer than diamonds. In fact, the only known source of high-quality rubies is in Sri Lanka, and the only source of high-quality sapphires is in Thailand.

April's level. It was the lowest since 1954. Awards for new apartment construction in 1967 fell 16 per cent in the quarter over its low level in July, 1966. Economists at the National Bureau of Economic Research, however, from economists at the National Bureau of Economic Research. Actual spending on construction in the year for the second half of 1967. Outlays, seasonally adjusted, were 1.1 per cent below April's level.

Reduced expansion plans of utility companies and the construction of private investor-owned firms are appropriating less money to build electric power facilities, the Conference Board finds. Quality analysts at Richardson, Ladd & Jenrette, a brokerage house, warn that further cutbacks can be expected unless regulators let rates climb 5 to 10 per cent a year over the next five years. But increases on that scale will encounter stiff consumer resistance.

Prices farmers get rose 2 per cent in the month ended June 15. This was the third monthly increase in a row. Contributing most to the rise: soybeans, wheat and corn. Plans of Russians to buy about 1 million additional bushels of soybeans, mostly from the U.S., could push soybean prices higher.

On the other hand, a Government study shows American farmers planted 72.4 million acres of corn this year, 1 per cent more than last year. That may produce a record crop. Soybean prices are up sharply.

Demand has soared for high-quality diamonds. Prices of diamonds kept climbing in the first half of 1967. This is unusual. A good diamond, the experts say, is worth more than it did in 1967. Prices are up 15 per cent. Currently pushing prices higher are investors and gold's fall from favor. Gold's fall from favor has sold artificial rings to remember the gem.

This magazine's index shows business

UNEMPLOYMENT INDEX

UNEMPLOYMENT INDEX-1957=100	Year Ago	Month Ago
Composite Index	103.0	103.0
Steel production	115	103.1
Auto production	117	111.7
Chemical production	111	103.1
Electric power production	111.2	103.0
Textile production	111.0	112.3
Freight car production (all index)	111.1	111.1

UNEMPLOYMENT INDEX-1957=100	Year Ago	Month Ago
Construction of new buildings	103.3	103.2
Manufacturing of new buildings	103.3	103.2
Textile production	111.7	112.3
Freight car production	111.1	111.1

Looking for value in semiprecious gems

Prices on so-called "semiprecious" gems such as amethysts, aquamarines, and tourmalines are up 300% in the last five years and apparently are destined to climb still higher. A fine aquamarine today retails for \$200 to \$300 a carat, while five years ago it was \$50 to \$75 a carat. A good amethyst goes for \$30 to \$50 a carat vs. \$8 to \$12 five years ago. And not only gem dealers, who admittedly have an interest in promoting sales, but also independent gem experts say that price increases have a lot further to go.

Even though some stones may be called semiprecious, many of them—fine pink tourmalines, alexandrites, and green grossularite garnets, for example—are rarer than such precious gems as rubies and emeralds. Because of their rarity, Paul Desautels, curator of gems and minerals at the Smithsonian Institution, figures that quality semiprecious stones remain a good investment today since the supply is getting scarcer and the demand is growing.

Harder to find. Frank P. Jaeger, president of Precious Minerals Corp., a New York gem miner, wholesaler, and retailer, predicts a minimum gain of 150% to 200% for many precious stones over the next five years. New sources of stones are harder and harder to find, he says, and some old supplies are drying up as foreign countries nationalize them or exercise tighter control over mining operations. Then, too, he adds, an incredible amount of "gem rough" must be sifted to produce a stone of top quality. As a general rule, several thousand tons of gem rough yield about 1,000 kilograms of usable gem material, and, out of this, only 15% to 17% becomes investment-grade gems.

There are drawbacks to investing in gems. Melvin Strump, president of Superior Gem Co., a New York wholesaler, says there is no central marketplace where investors can readily sell their gems. But dealers also note that as demand increases, more jewelers are moving into the gem market.

The problem. Another drawback is that gems are usually available to the investor only at retail, while a jeweler offering them wholesale. Since the retail markup can run from 17% to 100%, it takes some years for the appreciation in the stone's price to surpass the markup. Still, the long-term apprecia-



Gem dealer Jaeger says old sources are drying up and new ones are harder to find.

tion has proven great enough in the past to more than offset the markup.

Because it takes a good deal of skill to appraise the real worth of a stone, gem dealers advise buying only from reputable jewelers. The most critical factor in determining quality in semiprecious stones is color. Usually the richer and more intense the color, the greater the stone's value. For an aquamarine, for instance, the most valued shade is a deep blue with a hint of green, while for a green tourmaline, the brightness of the color is the key. Paul Heubert, president of Inter-Ocean Trade Co., a New York gem dealer, suggests that potential investors examine a large number of stones before buying to find the ones with the best colors. The degree of flawlessness is important, too, but a colored semiprecious stone can be considered fine just so long as no flaws are apparent to the naked eye.

A last-place team tries new managers

Firing the coach for a poor record is common in college athletics, but unusual among college endowment funds. But this week Kalamazoo College, a small Michigan liberal arts school, is doing just that—dropping its fund managers, and making drastic changes in investment policies as well.

On May 1 Kalamazoo will replace the First National Bank of Boston and T. Rowe Price Associates Inc., which together managed nearly 90% of the college's \$10.5 million endowment. Its management will be split about equally among Delaware Investment Advisers,

Market briefs

Trading in interest rate futures is growing. Volume in the \$100,000 Ginnie Mae (Government National Mortgage Assn.) contract is running at about 375 contracts a day, six months after trading was inaugurated on the Chicago Board of Trade. And at the Chicago Mercantile Exchange, where trading in the \$1 million Treasury bill contract began in January, 275 contracts a day are changing hands.

As they mature and liquidity improves, the markets are drawing increasing interest from financial institutions. The younger T-bill market is mostly speculative so far, with about 80% of business still done by speculators. But in Ginnie Maes, about 50% of business is now originated by hedgers such as mortgage bankers, Ginnie Mae dealers, savings and loan associations, and commercial banks.

Look for more oil and gas exploration in European waters outside the British and Norwegian areas, says Smith Barney analyst J. Kenneth Miller, who sees positive implications for the stocks of several marine construction companies. "Wall Street has just about written off the coastal areas of the Netherlands, West Germany, Denmark, France, and Ireland," says Miller, but three weeks spent recently in Europe have convinced him that "a significant increase in development work is likely to take place in these areas in 1977."

Miller stresses that the big boom in North Sea exploration has subsided, but still "there's going to be a relatively healthy level of business." If he is correct, he says, new North Sea commitments are likely to be made in the next 6 to 18 months—and Halliburton, J. Ray McDermott, and Santa Fe International are "attractive long-term investments."

Municipal bond funds are still drawing investors' dollars at a surprising clip. "Many people had expected that the sharp rise in the stock market would draw some investment funds away from the municipal bond funds," says Richard J. Franke, president of John Nuveen & Co. But if the present volume of sales keeps up, they will total nearly \$3 billion for the year. Despite declining rates in the debt markets, the funds offer investors yields that evidently look attractive compared with the risks in the stock market. This week Nuveen sold a \$20 million tax-exempt fund, yielding 6.50%—although 40% of the bonds were rated Aa and the remainder A.

GEM WITH BOOKS

INVEST IN GEMS TO MAKE YOUR FUTURE SPARKLE

BY VICTORIA STEVENS

If diamonds are a girl's best friend, they may also be shaping up as inflation's worst enemy. Investors long ago discovered that gems, despite the fluctuations of the stock and money markets, remain as steady as the age old rock.

Diamonds, for example, are prized because their price fluctuates less than that of any other precious material, including gold. That's because there's no free market in diamonds—their distribution is tightly controlled by the De Beers Syndicate, a cartel that for the past 80 years has handled 85 per cent of the world's supply. As a result, even during the Sixties, one of the most lucrative periods in Wall Street's history, wholesale diamond prices rose nearly twice as much as the Dow Jones average. With a virtual monopoly on the market, De Beers can be and is very selective about whom it sells to. Every year De Beers parcels out its wares at 10 London "sights." Only dealers are admitted, men like Harry Winston, who gave the Hope Diamond to the Smithsonian Institute and who receives a \$9-million annual allotment. The average buyer, however, enjoys

"... Diamonds fluctuate less than any other precious metal, including gold...."

no such special privilege, and is therefore at the mercy of his gem dealer. Consequently, selecting a diamond for fun or profit is a tricky business, and the pitfalls are legendary.

For instance, prices advertised as wholesale really aren't and while a "keystone" or asking price can often be shaved down a bit, reputable dealers won't haggle. On Manhattan's West 47th Street Jewelry Row, known as the diamond capital of the United States, some merchants have begun to employ on-street solicitors. These "pullers" have given the strip the frenzied air of a Tanager bazaar. Anyone



who falls for these tactics is treated to an even bigger "act" inside. Every proprietor maintains that he's holding a gem for a particular friend, an unfortunate soul who is down on his luck and whose sudden, staggering reversals of fortune have forced him to pawn the very diamond from his mother's own wedding ring. The friend's plight is so dire that the huckster may even shed crocodile tears while he's cutting the price down several strata past "rock bottom." Don't waste time on this kind of pitch.

Another flimflam involves the "free appraisal." To convince a potential buyer of a gem's quality, a merchant may offer to consult an outside specialist, one who is "conveniently" located in the shop across the street. This person is certain to give a glowing assessment. However, a more reputable man may later find flaws as obvious as the proverbial flies in amber.

Another familiar ploy is the stone that's been "painted"—or coated with a synthetic material to improve its appearance. Naturally, a reliable appraiser will spot such a cheap trick immediately. You will also find that honest appraisers no longer describe a diamond as "blue-white" or "perfect." Both terms have been widely misused in the past and have since become meaningless. Today, according to a ruling by the Federal Trade Commission, a diamond may only be called

flawless if no faults are visible under 10-power magnification.

Instead of falling for fanciful descriptions, let the four C's—color, cutting, clarity and carat weight—be your guide.

Color, in white diamonds, refers to crystal clarity and the absence of a yellow tinge. (True colored diamonds are another matter entirely.)

Cutting should be accurate if the gem is to have fire and brilliance. A broad-topped, shallow diamond is called a swindled stone and is worth considerably less per carat.

Clarity implies relative absence of flaws or blemishes. A flaw within the stone, called an inclusion, may affect light refraction, and a fissure or "cleavage" on the surface will impair resistance to shattering.

Carat weight, in a sense, is the least important consideration. A diamond lacking in the three other C's will bring little in the marketplace, even if

"... Emeralds, sapphires and rubies can cost more per carat than diamonds...."

it is as big as the Ritz. However, all things being equal, the value of any precious stone increases geometrically according to carat weight: a perfect two-carat specimen is worth \$6,000 and more while the more prevalent one-carat stone is valued at approximately \$2,000.

Gem-trade seers predict that more and more men will be sporting diamonds in the future, although Tiffany, that arbiter of elegance, refuses to carry men's diamond rings because it considers them to be in poor taste. However, Tiffany not only once featured men's diamond "gypsy rings" it also custom-made a solid-gold chamber pot for Diamond Jim Brady as a gift for Lillian Russell, proving that on occasion taste must go down the drain.

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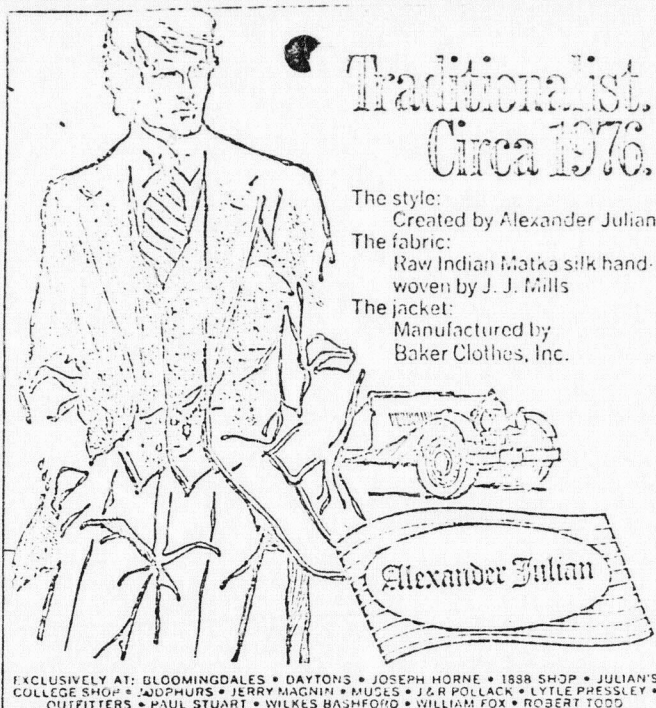
36 GEM/APRIL 1976

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The fabric:
Raw Indian Matka silk hand-woven by J. J. Mills

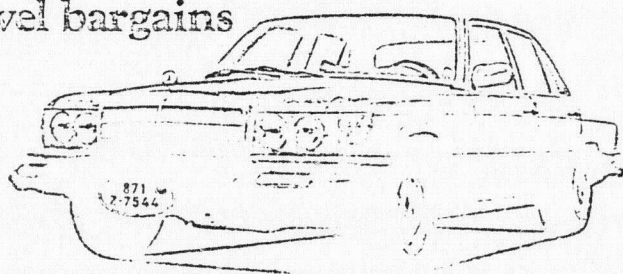
The jacket:
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MONEY

continued from page 16

Emeralds, sapphires and rubies can cost more per carat than diamonds, but they also offer some room for bargain hunting. These gems are unregulated by De Beers and, although their prices rise and fall with demand, the direction has been upward.

In 1955, rubies became the world's most expensive gem and by 1959 the larger ones were commanding as much as \$10,000 per carat. The most sought-after color is called "pigeon blood"—a clear, true red. Once you've seen it, it's not hard to spot among the paler and darker versions. Rubies tend to be small and the larger stones get rarer all the time.

Curiously, both rubies and sapphires are composed of the same mineral, corundum. The crucial difference is that rubies are red corundum, while sapphires are corundum of virtually any other color, the most valuable being blue velvet. Star sapphires are the result of a phenomenon called asterism. When three sets of parallel needles occur inside the stone, it may be cut in cabochon (in a dome-shaped fashion) to reflect a six-rayed star on its convex surface. Even when recut into smaller stones, each will exhibit the same star effect as the original. Imitations are easily detected because the stars don't shift from side to side when the gem is turned under strong light.

Most emeralds are mined in Colombia, where the workers, at the risk of being shot, occasionally make off with a few of the stones. These black-market gems are then passed on to local dealers who sell them for about one-twentieth of their wholesale value. Many years before writing "The French Connection," author Robin Moore's "research" involved him in a Colombian emerald smuggling caper. He and a partner bought \$14,000 worth of illegal uncut gems from a local source and, in a matter of days, they had recouped four times their original investment by reselling them in Jamaica for \$58,400.

Although both survived to tell the tale, that kind of profit obviously involves considerable risk to life and limb. More prudent types would do better to look for quality emeralds (green with blue rather than yellow tones, along with good clarity) at the going rate and then wait for steady, if less dramatic, appreciation.

A word of advice about synthetics: fancy, colored stones that have been cut from artificially manufactured corundum and spinel crystals are available for a few hundred dollars. They can't always

continued on page 42

Janet Hansen

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Daytime Moisturizer	(4 oz) \$5.00
Cash Residents add sales tax	
Shipping & handling	\$5.00
Total	

Enclosed is \$_____ check or m.o. or charge to my

☐ BANKAMERICARD or ☐ MASTER CHARGE

1	2	3	4	5	6	7	8	9	0										
Merchant name only										Exp. Date									
Signature										Date									

Name _____

Address _____

City _____

State _____ Zip _____

Personal Laboratories, Inc. 50 Thurnham Street
New York, N.Y. 10011 San Rafael, Ca 94901

MONEY

continued from page 10

be distinguished from the real thing, even by an expert using a jeweler's loupe, and must often undergo high-magnification tests in order to be detected. If you're paying for the real thing, make sure of its pedigree. A good appraisal takes time but will provide very complete information based on diamondscope, refractometer and polariscope tests. If you want a mounted gem appraised, it will have to be removed from its setting to be weighed.

Topaz, opal, aquamarine, amethyst, turquoise and alexandrite all flash a certain amount of chic. Yet, like many precious and semiprecious stones, they also offer some of the homespun pleasures of a boyhood rock collection. Gems are millions of years in the formation, which makes some of them older than humanity itself. Chrysoberyl and quartz feature a single, well-defined band of white light across the dome when cut in a dome-shaped manner. This is the prized cat's-eye effect. Alexandrite is even showier: it changes from olive green by daylight to raspberry red under incandescent bulbs.

There's a certain amount of satisfaction to be had in buying loose stones and then having them made into jewelry of your own design. But jewelry crafting is necessarily an intricate process because gems are tricky to handle. A slightly misjudged tap on the surface of a stone and you may be left with a tiny pile of expensive chips; the heat of soldering can also cause a gem to shatter. Obviously, the loving-hands-at-home approach on precious baubles ought to be supplanted by trained professionals.

Not all gems have been designed to be worn. Some dazzling collections have been created purely for the purpose of display. Designer Jean Schlumberger, whose talents have been compared to Cellini's, likes to produce what he calls fantasies. For the Paul Mellons he created a famous sunflower—8 inches tall with a gold stem and emerald leaves and, at its center, a 100-carat sapphire. And for Aristotle Onassis, who then controlled the gambling casino at Monte Carlo, he came up with another tiny trinket, a gold-ebony-and-ivory baccarat shoe for his high-rolling companion Gianni Agnelli.

No less an authority on jewelry than Richard Burton, however, whose gifts to his lady Liz constitute a veritable diamond jubilee, maintains that there is method behind his buying madness. When accused of reckless spending and extravagance, the actor replies that his are not idle indulgences at all, but, as any Wall Street advisor would be willing to attest, the wisest and soundest of investments.



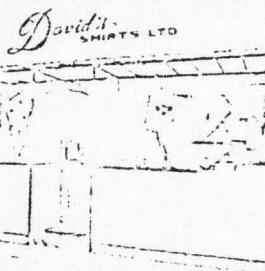
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How to Invest in Precious Gems

You don't have to be a millionaire to invest in the very best-quality precious gems, such as diamonds, rubies, sapphires, and emeralds. And if the past is any guide to the future, jewels offer the potential for substantial appreciation and a good hedge against currency devaluations and inflation.

You can buy a very high-grade 1-carat diamond for \$3,000 to \$7,000 retail, a fine 1-carat ruby for \$5,000, and a quality 1-carat emerald for \$7,000 to \$9,000. With \$20,000 to invest, you should be able to buy either a very fine 2.5-carat Burmese ruby, a 4-carat Burmese sapphire, a 2-carat Colombian emerald, or a 2.5-carat very white flawless diamond.

And prices are up substantially in recent years. A very high-grade 1-carat diamond sold for \$2,500 retail in 1963. Today the same stone could be sold at slightly less than wholesale price for about \$5,000—a gain of 117%. High-quality colored stones have done even better, with emeralds and rubies doubling in value over the last five to seven years.

There's no iron-clad guarantee, of course, that prices of top-quality precious gems will appreciate that much in the future. "But if you're buying for the long term, you're virtually guaranteed that gemstones are going up," says Frank Jaeger, president of Precious Minerals Corp., a New York gem miner and wholesaler. The reason: There's a very small supply of top-quality gemstones—far from enough to meet demand.

Buy only from reputable jewelers

Buying gems is a tricky business. You should buy only from reputable old-line jewelers," says Benjamin Zucker, an executive with Precious Stones Co. The top names are Cartier's in New York, Shreve Crump & Low Co., in Boston, or Gump's in San Francisco. Explain what you want to buy and how much you want to spend. Insist on looking at a variety of stones before you buy.

Retail markups on fine-quality gemstones are usually 30% to 50%, but, notes one dealer, with the bigger gems the markup is smaller. You can negotiate with a jeweler—even a Cartier—especially on investment-quality gems.

Before you buy, though, get an outside appraisal—either from another jeweler or from an appraiser who will charge you a commission of 1.5% of the gem's value. You can find an appraiser by checking local jewelers.

Another must: Have the stone certified by the Gemological Institute of America, which has offices in New York and Los Angeles. If the jeweler has not had the stone certified by the GIA, it can be sent by registered mail to the Institute's offices. The charge to authenticate a 1-carat diamond is \$30.

The GIA also has some guidelines for buying diamonds. The whiter the diamond and the fewer flaws it has, the greater its value. Buy only stones that are rated D, E, or F on the GIA's color scale, and those rated flawless to very very slightly flawed (vvs).

Depth of color and clarity—the degree of flawlessness—are the most important things to look for in buying colored stones. The GIA can distinguish between authentic and synthetic stones, but it does not yet certify their color and clarity. In buying a colored stone, deal only with jewelers who have a large supply on hand so you can compare color.

An additional cost of investing in gems is insuring them—which can be expensive. Rates vary from state to state and insurer to insurer, but figure on an annual premium of \$2 to \$4 per \$100 of the stone's value. If you put your gems in a vault, vault insurance is available at an annual premium of 20¢ per \$100 of the gem's value.

seven-year, \$40 million revolving credit arrangement was set up a year ago.

The proposed bond issue is expected to be placed privately with institutional investors rather than through a public marketing, Mr. Carter said.

To provide for the current and projected record-breaking volume of business, the heavy-machinery manufacturer plans to continue its expanded capital-spending program. In the fiscal year ended Oct. 31, capital spending amounted to \$20.6 million and more than another \$20 million has been slated for fiscal 1975, Mr. Carter said. The capital outlays in each of those years are roughly double that of fiscal 1974.

Included in this fiscal year's capital budget is a further expansion of the company's Milwaukee facilities, especially for the production of electric mining shovels. "We'll continue to have capacity problems in 1975, but there'll be some improvement," Mr. Carter said.

The record-breaking trend of sales and earnings in recent years is expected to continue in fiscal 1975, he indicated.

The executive didn't project an earnings goal for fiscal 1975, but observed that both past higher sales and earnings are anticipated.

Diamond Prices to Rise An Average of 3% Jan. 19

Special to THE WALL STREET JOURNAL
LONDON—Diamond prices are going

UP again.

The Central Selling Organization, which markets about 80% of the world's newly mined diamonds, said it will boost prices of rough, or uncut, gem stones an average of about 3%, effective Jan. 15.

The agency, which is an affiliate of De Beers Consolidated Mines Ltd., is one of the world's most effective cartels, buying up the diamond production of participating companies and governments and rigidly controlling offerings to protect the price.

Harnischfeger earned 8.3% on sales in fiscal 1973, well above the margin of preceding years. He said higher prices, improved volume and operating efficiencies contributed to the improvement.

In fiscal 1973, Harnischfeger reported net income of \$23.5 million, or \$5.45 a share, on sales of \$373.9 million.

Daimler-Benz Plans Nigeria Auto Venture

Special to THE WALL STREET JOURNAL
STUTTGART — A third European auto maker is planning a motor-vehicle venture in Nigeria.

Daimler-Benz AG said that it signed a basic accord with the Nigerian government covering a joint commercial-vehicle plant in Enugu, East Central State.

Daimler-Benz will hold a 40% stake in the venture, the Nigerian government 35% and the rest will be held by other private and public partners in the country. Initial capitalization was put at the equivalent of \$10.6 million.

Construction will take about two to three years. The plant initially will have an annual capacity of about 7,000 chassis for medium Mercedes trucks and buses.

Recently, British Leyland Ltd. and Fiat S.p.A. also announced automotive ventures in Nigeria.

We're at home
in the forest. But...

Once spoken, the words are irrevocable—and to more binding than any signed contract. Should either party seek to back out of a deal, a meeting of the club's arbitration committee is called. "We have no interest in the gems or their price," says Albert Lubin, a New York arbitrator. "Our only concern is whether or not the buyer gave *money* and *bricks*." If he did, then he must go through with the transaction or face instant suspension from the club—which would automatically bar him from all the other diamond houses.

Caution, Buyer. Unfortunately, the integrity that characterizes the wholesale end of the gem business does not always extend to the retail level, and one would be foolish indeed to buy a diamond from any person but a jeweler of unquestioned reputation. Assessing the value of a stone is no simple matter. Inexperts, dealers say, on the Four C's—color, clarity, cut and carat—often buy a piece that is a bargain to regret. "The sole rule of the retail end is 'buyins,'" if you will, and some at a price appreciably lower than that of other houses of the same weight and quality says New York's Harry Winston, one of the world's largest jewelers. "If you are in the best of luck there is no reason why you won't."

11 YOUR PROPERTY IS 16

make a quick profit, the answer is no. Although prices continue to rise, and are not likely to drop, the retail markup is high, and it may take years before a jeweler will buy back from you a diamond for the price you originally paid. As a long-term hedge against inflation, however, a diamond of good quality, weighing a carat or more, is as safe an investment as can be found.

"It's a lot prettier than a stock certificate, and you don't have to worry about fluctuations in the market," as one economist puts it. "It just lies quietly in your ring or safe-deposit box, appreciating in value every day."

*See "How to Buy a Diamond," *The Reader's Digest*, May '70.

Libra Interactiva, S.A.

GOLDEN V. THE DRYLANDS

1. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 2. P. H. Geinley, *Chem. Abstr.*, **50**, 12676 (1955).
 3. E. A. Rabinovich, *Chem. Abstr.*, **50**, 12676 (1955).
 4. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 5. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 6. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 7. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 8. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 9. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 10. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 11. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 12. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 13. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 14. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 15. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 16. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 17. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 18. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 19. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).
 20. A. A. Kabanov, *Chem. Abstr.*, **59**, 12676 (1959).

THE GOLDEN RING

September 17, 1978 October 13, 1978

Presented by
London Philhar.
"The Fascinating
World of Beethoven"
Oct. '73

Gems display glittering long-term performance

Diamonds: an investor's best friend

Suppose this happened to you several years ago. You were awakened in the middle of the night by a leprechaun from County Cork and got the message that Wall Street had shot its bolt and that all your stocks would be at the far end of skid row by mid-1973. Just as you were fumbling for the telephone to call the cops, the leprechaun told you that you should sell all your stocks and put every penny you got into cut diamonds at wholesale prices. The leprechaun then disappeared, and the very next morning you followed its advice. How would you have fared? Very well, relatively speaking, unless you had picked all winners in the stock market derby.

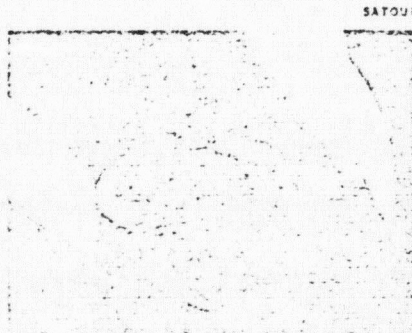
The last decade has seen the price of fine one-carat diamonds rise by some 350%, but much of that increase has come in the last couple of years. During that period, the price of the average, good-quality cut diamond has gone up by some 70%—and now appears to be rising by 10% or so every few months. No one in the jewelry trade has any idea when the diamond boom will stop. Well-to-do Japanese are gobbling up fine diamonds like crazy, while demand in the U.S. and Europe has been stimulated by economic prosperity and inflation.

The diamond boom is very remarkable, since, up to fairly recently, diamonds rose in price fairly regularly and steadily, but not very quickly. The whole diamond market, of course, is tightly controlled—not only by De Beers of South Africa, with its price and supply grip on over 75% of the world's rough diamonds, but along the cutting and retail distribution network. The typical small investor can't buy rough diamonds at the London diamond sights, so he has to get them from someone in the diamond trade. So, really, an investor has to avoid the

normal retail markup if his purchase is to prove a sparkling success.

How does he do it? Firstly, a look at what diamonds are. They are simply crystallized carbon, chemical formula C, produced by the earth's processes in a wide range of size and quality. Those used in jewelry are simply the better end, while industrial diamonds are the lower end. Demand for gem diamonds has been so high in recent years that many now used as gems would formerly have been sold to industry. Man has long since been able to produce industrial diamonds, but gem-quality diamonds, for scientific use, are also now produced, even though they are far more expensive than similar natural stones.

Four aspects of a diamond have to be known accurately before its value may be assessed. They are sometimes known as the four C's—an appropriate idea for crystallized C (for carbon). The first is carat weight. The second is color—actually, absence of color,



Worth \$5 billion a ton—at least

since the finest diamonds are completely without color. Thirdly comes clarity, or the absence of flaws. Last, but by no means least, is cutting, or the shaping quality of the cut gem. None of these can be assessed accurately while the gem is set in jewelry. Any buyer of a diamond in a ring or pendant, for instance, is either putting his trust in the jeweler or buying something of a pig in a poke.

The color of diamond is very significant. Those sold in stores are usually several grades below the finest, but the difference is not apparent to the average buyer—unless the color has dropped to the yellow or brown grades. A difference of even one color grade makes a big difference in value, and an investor who thinks he can make the distinction by eyesight alone is kidding himself.

The carat weight of a diamond is obviously important, since stones become more valuable per carat the heavier they are. Thus four quarter-carat stones are worth far less than one one-carat gem. In the trade, diamonds are weighed to one-half of one point, or 1/200 of a carat. But the weight of a diamond has to be considered along with quality of cutting. That's because Mother Nature does not oblige with perfection, but produces crystals that are variously shaped. Each crystal may be cut in a variety of ways.

The clarity of a gem, or its imperfections, is also important, since even a small blemish diminishes the stone's value. In jewelry, diamond flaws are difficult to see, and are sometimes hidden away under a prong or other part of the mounting. Even the location of the blemish is important, since one flaw may be hardly visible while another may stare one in the face. The more obvious the flaw, the more the damage to the gem's value.

Rather tricky, isn't it? Yet investors do buy diamonds. How? That can be even trickier. Since diamond buying calls for specialized knowledge, experience and instruments, an investor has to put his trust in the seller of diamonds. Let the buyer beware. Investigate before buying diamonds. Many investors have safely bought diamonds through their local jeweler, who agreed to buy at wholesale, make a small profit, and pass the diamonds on, for investment purposes only, to a customer. A small order here would be \$25,000, while \$50,000 would be quite large. Single diamonds, except for important gems, are unlikely to be sold by a local jeweler—except at full retail value.

How does an investor sell his diamonds? That's another tricky problem, but it can be solved with a little ingenuity. Some diamond sales firms offer to take them back at a slight discount from the selling price, but the buyer should get something in writing on that score. There's no easy or organized market in which to sell diamonds. An investor who buys through a local jeweler should first ascertain how the diamonds may later be sold.

All-in-all, though, using past record as a yardstick, it seems quite clear that a little patience, and more than a little effort, can turn cut diamonds into an investor's best friend.

642
TELEPHONE: (212) 575-0444

30 WEST 47TH STREET
NEW YORK, N.Y. 10036

CABLE ADDRESS: DIAMREG N.Y.

The Diamond Registry

May 31, 1977

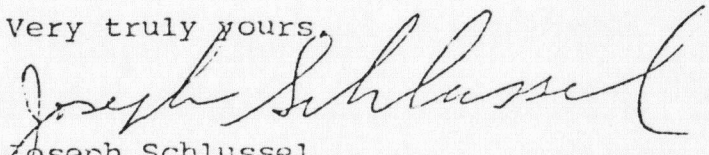
Dear Mr. Doren,

Enclosed are some back issues of The Diamond Registry Bulletin which may prove relevant to your case. These bulletins are issued monthly as inside information for 2000 diamond merchants in the United States and other subscribers. The subscription rate for non-members is \$55 per year.

According to a chart issued by the Gemological Institute in 1967, a flawless D colored diamond weighing 1 ct. would sell at wholesale for \$1250 per carat. The same quality today would cost between \$7500-\$8000 per carat. For a VVS1 in G color you would have to deduct 14% according to the deduction chart of the Gemological Institute of America.

I hope the above information may prove useful to you.

Very truly yours,


Joseph Schlussek
The Diamond Registry

JS/ew

EXHIBIT II

BELGIUM OFFICE - 17 AVENUE DE BELGIQUE, ANTWERP, BELGIUM
ISRAEL OFFICE - 17 RABBI HERZOG STREET, PETACH TIKVA, ISRAEL

109

R. M. DIAMONDS
18 WESTBROOK CRESCENT
TORONTO, CAN. M5N 2T1
PHONE 477-7235

ORDER NUMBER	19558
DATE	NOV 23/76
SALESMAN	
DELIVERED	

SOLD TO MERCHANT DEMAND GROUP
107 DELAWARE AVE 16TH FLOOR
BUFFALO NEW YORK 14202
ADDRESS VIA

INVOICE

2.2/100	14	5/0.45	3.00	carat	full cut	vs. D	402	1206	
2.2/100	1	"	0.16	"	"	"	462	120	12
3.2/100	4	"	1.20	"	"	"	442	597	60
4.2/100	5	"	2.01	"	"	"	606	1264	1/2
5.2/100	7	"	3.04	"	"	"	722	3013	12
7.2/100	2	"	1.10	"	"	"	1172	1773	
10.2/100	2	"	2.03	"	"	"	1722	3861	0.6

#0823
Nov. 23/76

11926.1 2

EXHIBIT

USA

R. M. [illegible]
10 WISCONSIN ST.
TORONTO, ONT. M5S 1A2
PHONE 464-7238

55021
DATE MAR 22 77
[illegible]
[illegible]
[illegible]

SOLD TO MERCHANT DIAMOND GROUP
107 DELWARE AVE
BUFFALO N.Y. 14204

INVOICE

QTY	DESCRIPTION	PRICE	TOTAL
12	stems OR for 3.02 smals	515	1555 30
33	" " " 9.47 "	645	6430 65
1	" " " 0.42 "	769	322 56
15	" " " 7.65 "	450	1367 50
1	" " " 0.62 "	1010	626 20
17	" " " 12.95 "	1430	18561 40
4	" " " 4.10 "	2118	8683 80
			43447 41

March 29/77 - 35.76
1367

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

MERCHANT DIAMOND GROUP, INC. (MDG)

MISC. CRIM. NO. 214

GOVERNMENT'S ANSWER TO MDG'S
SHOW CAUSE ORDER OF JUNE 8, 1977

NOW COMES THE UNITED STATES OF AMERICA, by and through its attorneys, Richard J. Arcara, United States Attorney for the Western District of New York, and Dennis P. O'Keefe, Department of Justice Attorney, and hereby makes answer to the MDG Show Cause Order of June 8, 1977.

On June 8, 1977 MDG caused to be served on the Government an Order to Show Cause as to why certain monies and properties should not be returned to the MDG. In the alternative MDG requested a hearing on the merits.

MDG argues that the Government's affidavit upholding the various search warrants, Court Orders, etc., is inaccurate, misleading and, in some respects, false; therefore, the warrants should fail and MDG'S property be returned to MDG.

The facts are to the contrary. MDG'S affidavit seems to raise four issues: (1) Quality of the Diamonds, (2) Retail Market and MDG'S "buy back" policy, (3) Prior and present conduct of its officers and employees, and (4) Appreciation of Diamond Value and Appraisal.

I. QUALITY OF THE DIAMONDS

On page four of MDG'S affidavit it is said that "MDG, Inc. only sells diamonds of the very highest quality"; however, under footnote one (1) which appears at the bottom of page four (a detailed explanation relative to the

standard method of grading diamonds for quality), it is clearly stated that MDG purchases for resale diamonds which vary in cut and clarity and vary widely in color (a very important consideration). Again, on page thirteen of the affidavit it is said, "The diamonds which Merchants Limited sells to its customers are not of widely varying quality. These diamonds are, in almost every instance of VVS1 quality." [emphasis added.] However, in the last paragraph on the page the Affiant states that he has reviewed the purchase invoices of MDG and found that the diamonds are of VVS quality, not VVS1 as alleged in the prior paragraph. This poses a paradox: what do they mean and why didn't they say what they mean? The answer is a simple one -- MDG sells diamonds of widely varying quality as alleged by the Government and as shown by their own affidavit.

II. RESALE MARKET AND BUY BACK POLICY

On page six of the MDG affidavits, and again on page seventeen MDG seems to deny that they ever told their customers that there was a ready retail market for diamonds, nor did they promise their customers that MDG would "buy back" any diamonds which the customer later wanted to sell. With regard to this issue the Government relies upon its original affidavit and upon the statements of MDG'S many unhappy and disgruntled customers as they appear in the electronic intercept. Their recorded statements are to the effect that they had been told there was a ready retail market for diamonds and that, in the event they were unable to sell their diamonds, MDG would buy them back from the customer. The Government is prepared to play these recordings for the Court.

III. PRIOR AND PRESENT CONDUCT OF MDG EMPLOYEES

On page ten of the affidavit MDG makes the point that neither MDG or its officers stand charged with a crime as a result of their diamond sales in the United States. [They fail to mention that MDG and all of its ^{Canadian} officers stand charged with the crime of fraud in Canada as a result of their diamond sales.] On page twelve MDG makes the point that Stanley Harold Bader and Harold Eric Smith -- both of whom were convicted in Canada of stock fraud in May 1976 -- are no longer with MDG. Al Lindzon, who was convicted with Bader and Smith,

however, is still with MDG, and Bader left only after his conviction. Harold Eric Smith, who is said to be no longer with MDG, was arrested in MDG'S offices on April 14, 1977 (the day of the search) and deported to Canada following a hearing. Why he was in the MDG offices on April 14, 1977 is a matter for conjecture and speculation. While MDG may feel that this information is being placed before the Court for its "prejudicial effect", the Government feels that the Court should be aware of the background of the persons who are connected with and employed by MDG.

IV. APPRECIATION AND APPRAISAL

While there seems to be some discrepancy as to the appreciation in value of diamonds on the wholesale market (there is a two to three hundred percent markup for retail sales), whether or not diamonds in the hands of ordinary citizens appreciate substantially would seem to depend on the quality of the diamonds and the citizens' knowledge and access to the diamond market. Here the two experts, Mr. Theodore J. Calderia, the certificate holder, and Mr. Robert Arend, a widely recognized expert in the field and a graduate or member of The Gemological Institute of America, seem to be at loggerheads. Here another paradox arises. If Arend is incompetent or a liar, why did MDG list Arend (without his knowledge or permission) as an appraiser in their brochure which was given or mailed to potential customers.

The answer is simple. Robert Arend is a widely recognized expert upon whom MDG'S customers relied and upon whom the Government now relies. His statement that even an uncut diamond (which appreciates faster than a finished diamond) appreciates at only 8 to 9 percent a year is a reliable judgement. MDG'S fraudulent statement that diamonds appreciate 30-60 percent a year is inaccurate, misleading, false and fraudulent, as is their whole operation. MDG'S own statement, on page fifteen of their affidavit, to the effect that since the early 50s diamonds have risen 300% supports Arend's statement of an 8 to 9 percent rise per year.

When we consider (1) the admitted criminal fraud background of some of MDG'S present and past employees, (2) the admitted variance in diamond quality

(which may be enormous in terms of dollars), (3) the statements of customers as to promises made to them by MDG in terms of resale and "buy back" policies (as disclosed in the electronic intercept), (4) MDG'S fraudulent reliance on the name of Robert Arend to sell diamonds, and (5) MDG'S own sworn statements confirming Arend's judgement as to the dollar appreciation of diamonds, we can only conclude that there is probable cause to believe that MDG was conducting a fraudulent diamond sales business which was in violation of the wire and mail fraud statutes.

WHEREFORE, the Government has SHOWN CAUSE as to why MDG'S motion to return the fruits of the Court Ordered searches and to lift the Order now freezing the financial assets of MDG should be denied.

Moreover, the Court should keep in mind the fact that \$375,931.67 held in Marine Midland Bank account No. 756-75044-0, known as the client's trust fund, is money being held in trust for MDG customers who have not, as yet, received diamonds or anything else, for their money.

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney

Dated: June 10, 1977

At: Buffalo, New York

By: Dennis P. O'Keefe
DENNIS P. O'KEEFE
Department of Justice Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

Misc. Crim. No. 214

THE MERCHANT DIAMOND GROUP, INC.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR THE RETURN OF SEIZED
PROPERTY

Under the Federal Rules of Criminal Procedure, Rule 41(e), a person aggrieved by an unlawful search and seizure may move in the United States District Court for the return of property on the ground that he is entitled to lawful possession of the property which was illegally seized. Rule 41(e) also provides that a judge may receive evidence on any issue of fact necessary to the decision of the motion.

A judge may inquire into the truth of an affidavit upon which a finding of probable cause for the issuance of search warrants has been made. For instance, in United States v. Gillette, 383 F.2d 843 (2d cir. 1967) the Court held that in

appropriate circumstances a hearing should be held to establish the veracity of sworn allegations in an affidavit which might appear to be adequate on its face. The appropriate circumstances arise where there is an initial showing of falsehood in the affidavit on the part of the person moving for the return of the property. As stated by Judge Frankel, in United States v. Halsey, 257 F.Supp. 1002, 1004-1006 (S.D.N.Y. 1966), when there has been an initial showing of falsehood or other imposition on the judge or magistrate a hearing may be held to determine the questions of fact which have been raised and the truth or falsity of the allegations in the affidavit. Judge Frankel's opinion, supra, was cited with approval in United States v. Dunnings, 425 F.2d 836 (2d cir. 1969).

The affidavit of BRIAN P. FITZGERALD, ESQ., based upon personal examination of the books and records of THE MERCHANT DIAMOND GROUP, INC., sufficiently sets forth facts which at least raise questions as to the accuracy and truthfulness of the affidavit of the Postal Inspector, Ronald L. Snyder. The entire affidavit of Mr. Snyder is replete with hearsay information, opinion, prejudicial statements, and speculation. Mr. Snyder's investigation apparently consisted only of conversations with Corporal Ross Kossatz of the Royal Canadian Mounted Police on April 5, 1977, and April 7, 1977. There was not a single instance

PERSTEIN, DAY
& HADLER
New York, New York
City, New York 10022

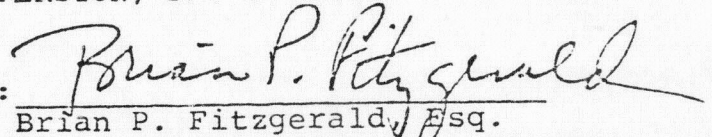
of Mr. Snyder's personal observation or investigation into the alleged misrepresentations which were related to him by Corporal Kossatz. Such an affidavit should be seriously questioned when it results in a search and seizure of assets worth over Five Hundred Thousand Dollars (\$500,000.00).

It is, therefore, respectfully requested that this Court order the property returned, or in the alternative, order that a hearing be held to determine the truthfulness of the affidavit of Ronald L. Snyder.

RESPECTFULLY SUBMITTED,

SAPERSTON, DAY & RADLER

By:



Brian P. Fitzgerald, Esq.
Attorneys for The Merchant Diamond
Group, Inc.

Office & P. O. Address
1500 Liberty Bank Building
Buffalo, New York 14202
716-856-5400

SAPERSTON, DAY
& RADLER
Liberty Bank Building
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

MERCHANT DIAMOND GROUP, INC.

Misc. Crim. No. 214

APPLICATION and ORDER

THE UNITED STATES OF AMERICA by and through Lloyd George Parry, Department of Justice Attorney, hereby makes this application for an order as follows:

There is pending before this Court in the above captioned matter a motion by the Merchant Diamond Group, Inc. (Merchant, Inc.) for the return of seized property pursuant to FRCr.P 41(e). This motion seeks the return of all property seized pursuant to a series of search warrants executed by the Government as well as the release of certain funds currently held pursuant to a series of Court Orders in Marine Midland Bank Accounts 756-75037-7 and 756-75044-0. The most recent of the said Court Orders expires on June 17, 1977. The hearing on Merchant, Inc.'s motion for return of seized property is scheduled to continue on June 20, 1977 and, presumably, additional time past that date will be required for the parties to submit written legal briefs and for the Court to render a decision.

WHEREFORE, in order to preserve the status quo until such time as this Court shall decide Merchant, Inc.'s motion for return of seized property, the Government requests that this Court order that the Marine Midland Bank shall continue to freeze accounts numbered 756-75037-7 and 756-75044-0 and shall not release, transfer or otherwise dispose of the funds therein until further Order of this Court.

Respectfully submitted,

LLOYD GEORGE PARRY
Department of Justice Attorney

* * * * *
IT IS SO ORDERED.

DATED: June 16, 1977

AT: Buffalo, New York

s/ John T. Curtin
United States District Judge

I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

:

THE MERCHANT DIAMOND GROUP, INC.: :

APPLICATION

THE UNITED STATES OF AMERICA, by and through Department of Justice Attorney Lloyd George Parry, hereby makes this application as follows:

1. On April 13, 1977, pursuant to application and an affidavit made by Postal Inspector Ronald L. Snyder, this Court issued a search warrant for the premises known as The Merchant Diamond Group, Inc., Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York 14202. On that same date pursuant to the same application and affidavit, this Court issued a search warrant for certain parcels to be deposited in the United States Mail by The Merchant Diamond Group, Inc. On April 14, 1977, pursuant to the application and affidavit of Postal Inspector Ronald L. Snyder and Special Agent Robert S. Brock this Court issued a search warrant for Safe Deposit Box #123, Statler Hilton Office, Marine Midland Bank, Buffalo, New York. On April 14, 1977, pursuant to the application of Department of Justice Attorney Lloyd George Parry, this Court issued an Order directing the Marine Midland Bank to freeze certain checking accounts maintained by The Merchant Diamond Group, Inc. On April 15, 1977, pursuant to the application and affidavit of Postal Inspector Ronald L. Snyder and Department of Justice Attorney Lloyd George Parry, the Hon. William G. Heffron issued a search warrant for certain bank accounts and bank records held by the Marine Midland Bank.

2. As to all of the above orders and warrants, the April 13, 1977 affidavit of Postal Inspector Ronald L. Snyder provided a basis in whole or in part. In that affidavit Inspector Snyder recites certain information provided by the Royal Canadian Mounted Police (RCMP) in connection with this investigation. Your Applicant has been advised by Corporal John Rowland, Commercial Crimes Section, RCMP, Toronto, and other members of the RCMP that their investigation into violations of the Canadian Criminal Code is continuing, and that it would be detrimental to that investigation to disclose at this time the contents of Inspector Snyder's affidavit.

WHEREFORE, Your Applicant requests that this Court issue the following sealing orders:

A. An Order directing the Clerk of the United States District Court for the Western District of New York to seal and hold under seal for a period of sixty days the application and affidavits for each of the above orders and warrants.

B. An Order directing the Clerk of the Erie County Court to seal and hold under seal for a period of sixty days the application and affidavits for the warrant issued by the Hon. William G. Heffron on April 15, 1977.

C. An Order directing the Clerk of the United States District Court for the Western District of New York to seal this application. Provided, however, that as to all of the above described documents, Canadian and American law enforcement authorities be permitted to retain and utilize working copies of the said documents for use in their investigations.

Respectfully submitted,

Lloyd George Parry
LLOYD GEORGE PARRY
Department of Justice Attorney

Sworn to and subscribed before me
this 20 day of April, 1977.

John T. Carter
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

THE MERCHANT DIAMOND GROUP, INC. :

MEMORANDUM OF LAW IN SUPPORT OF
THE SEALING ORDER OF THIS
COURT DATED APRIL 20, 1977

THE UNITED STATES OF AMERICA, by and through Department of Justice Attorney Lloyd George Parry, hereby submits this Memorandum of Law as follows:

I. FACTUAL BACKGROUND

1. On April 13, 1977, pursuant to application and an affidavit made by Postal Inspector Ronald L. Snyder, this Court issued a search warrant for the premises known as the Merchant Diamond Group, Inc., Suite 1629 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York 14202. On that same date pursuant to the same application and affidavit, this Court issued a search warrant for certain parcels to be deposited in the United States Mail by The Merchant Diamond Group, Inc. On April 14, 1977, pursuant to the application and affidavit of Postal Inspector Ronald L. Snyder and Special Agent Robert S. Brock this Court issued a search warrant for Safe Deposit Box #123, Statler Hilton Hotel Office, Marine Midland Bank, Buffalo, New York. On April 14, 1977, pursuant to the application of Department of Justice Attorney Lloyd George Parry, this Court issued an Order directing the Marine Midland Bank to freeze certain checking accounts maintained by The Merchant Diamond Group, Inc. On April 15, 1977, pursuant to the application and affidavit of Postal Inspector Ronald L. Snyder and Department of Justice Attorney Lloyd George Parry, the Hon. William G. Heffron issued a search warrant for certain bank accounts and bank records held by the Marine Midland Bank.

2. On April 20, 1977, pursuant to an application by Department of Justice Attorney Parry, this Court issued an Order sealing the above application and affidavits for a period of 60 days "or less if 60 days are not necessary". At that time the Government was directed to immediately notify the Court should the underlying conditions requiring the imposition of the Order change enough to permit a lifting of the seal.

3. On April 20, 1977, a federal grand jury investigation was begun into the activities of the Merchant Diamond Group, Inc. The property seized pursuant to the above warrants will be presented to the grand jury for its consideration.

4. By notice of motion dated April 22, 1977, Warren S. Radler, Esq. as counsel for The Merchant Diamond Group, Inc., initiated proceedings before this Court to have the sealing Order lifted to enable preparation for a motion pursuant to Rule 41(e) F.R.Cr.P for return of the seized property. On April 25, 1977, counsel for The Merchant Diamond Group, Inc. appeared on this motion and argued that there was no legal authority for the sealing Order.

II. POINTS OF LAW

The Court has directed the Government to provide this memorandum setting forth the legal precedent for its action in issuing the sealing order. A review of the case law indicates the following:

In Shea v. Gabriel, 520 F. 2d 879 (1st Cir. 1975), the plaintiff Shea had three magistrate's search warrants served on him by federal agents who proceeded to seize various instrumentalities of an alleged illegal gambling business. Shea was not arrested and, pursuant to Rule 41(e) F.R.Cr.P., he made a motion to inspect the affidavit supporting the search warrants and to have the seized property returned. In opposing this motion the Government stated that the disclosure of the affidavit would have an adverse impact

on its ongoing grand jury investigation. After examining the affidavit in camera, the District Court declined to order the disclosure of the affidavit and stated the following:

It is a long document involving many persons and events. It contains a colorable basis for the issuance of the warrants. In balancing the slim likelihood of present benefit to the plaintiff from examination of the affidavit against the possible jeopardy (to) the Government's investigation by revelation that compelling equitable and practical considerations favor the Government's position.

The District Court also refused to order return of the property, on the ground that the "prejudice to plaintiff by delayed return to him of the property is outweighed by the legitimate and appropriate governmental interest (in) using the property as evidence before the grand jury." (The full text of the District Court's opinion is attached hereto as Exhibit "A".)

In affirming the action of the District Court, the First Circuit Court of Appeals held that the equities were not in the plaintiff's favor and, accordingly, no relief could be afforded him. In so ruling, the Court of Appeals set forth the following considerations at 520 F. 2d 882:

First, the district court carefully balanced the government's interest in secrecy to protect its ongoing investigation against the temporary loss to Shea of the property here at issue. We are not inclined to disturb the balance struck, at least absent any reason to believe that the cloak of secrecy is being abused by the government. Second, the judge below did entertain the appellant's complaint to the extent he could within the confines of the secrecy requirement. He examined the affidavit in camera and determined that it was at least prima facie support for a finding of probable cause. Third, the dismissal was without prejudice to reasserting the claim if the government's delay in either prosecuting or taking other dispositive action reaches unreasonable proportions.

District Court cases with similar holdings are Pradella v. United States, E.B.D. No. 75-02 (D. Mass. 1975) and In Re: Coppola, E.B.D. No. 76-40 (D. Mass. 1976). The full text of these decisions are attached and marked Exhibits "B" and "C" respectively.

It is respectfully submitted that the factual background of the instant case is for all practical purposes indistinguishable from the facts and circumstances set forth in the above cases and that the holdings in those cases provide ample legal precedent for the action taken by this Court in issuing its sealing Order.

Respectfully submitted,

LLOYD GEORGE PARRY
Department of Justice Attorney

DATED: , 1977
AT : Buffalo, New Yor

EXHIBIT "A"

February 28, 1978

SWIMMER, J. J.

This Complaint alleges that on or about December 14, 1976, FBI agents searched the plaintiff's home, person, and automobile, and seized various documents and currency, pursuant to three search warrants which were issued on the previous day by the U. S. Magistrate. The plaintiff has not been indicted. The search warrants were applied for and executed as part of an ongoing investigation by the FBI which has been in progress for over two years and is presently the subject of continuing proceedings before the grand jury. The plaintiff seeks to examine the Affidavit submitted in support of the application for the warrants, seeks to have the use of the items seized enjoined pending determination of the merits, and ultimately seeks to have the seized items returned.

The Court has jurisdiction of the Complaint seeking the return of seized property even though the complainant has not been indicted. Lord v. Helley, 223 F.Supp. 604, (D. Mass. 1968). The interest of the complainant and of the Government in the prosecution of its investigations are to be balanced in accordance with equitable principles. Reagan v. United States, 351 F.Supp. 979, 983. The plaintiff asserts that he is entitled to the return of the allegedly illegally seized items, because they may form the basis

EXHIBIT "A"

...the Affidavit submitted by the FBI and the report of the grand jury for the purpose of the hearing. It is a long document involving many facts and details. It contains a veritable book for the interest of the court. In balancing the substantiality of present benefit to the plaintiff from examination of the Affidavit against the possible jeopardy of the Government's investigation by revelation of its contents, I am of the opinion that compelling equitable and practical considerations favor the Government's position. So much of the plaintiff's prayer as seeks inspection and copying of the Affidavit is therefore denied.

Similarly, interference with the grand jury investigation should not be lightly undertaken, and the present case reveals no extraordinary reason to do so. As said by Judge Murray in his Opinion in Pendella v. United States of America, E.B.D. No. 75-04:

"Any prejudice to plaintiff by delayed return to him of the property is outweighed by the legitimate and appropriate governmental interest of using the property as evidence before the grand jury."

Accordingly, plaintiff's prayers for interlocutory relief are denied and the Complaint is DISMISSED without prejudice to its renewal should the United States Attorney or the representatives of the Department of Justice fail to proceed with reasonable dispatch in presenting its case predicated on the seized property to the grand jury.

Walter Jay Schmitt
United States District Judge

MEMORANDUM

MURRAY, D.C. This case set to be heard on the "Petition to Inspect and Copy Application and Affidavit in Support of Application for Search Warrants". Petitioner seeks the inspection as a basis for filing a motion for return of certain property seized under search warrants issued on December 28, 1974 and executed on December 29, 1974. The property was seized from petitioner and will be presented as evidence to a federal grand jury.

The petition is treated as an equitable bill for discovery and, as such, is clearly within the jurisdiction of this court. Under Fed. R. Crim. P. Rule 41(c), federal district courts have jurisdiction to entertain pre-indictment motions for return of property. Ladd v. Kelley, 285 F. Supp. 684, 607-82 (D. Mass. 1968). Such a proceeding is grounded upon equitable considerations. Doonan v. United States, 331 F. Supp. 579, 580 (D. Cal. 1971); Ladd v. Kelley, supra, at 689. The bill for discovery will lie on the present record in support of a potential subsequent motion attacking the December 28 search warrants and seeking return of the property under the court's jurisdiction. Cf. Holte v. Massachusetts Port Authority, ___ Mass. ___, 316 N.E.2d 423 (1974); Massachusetts v. Boston Edison Co., 316 Mass. 94, 162 N.E.2d 719 (1959).

Three search warrants were issued on December 28 for search of petitioner's person, his residence, and his automobile. The court has received a copy of the affidavit upon which the three warrants were issued, and has examined it in affidavit. The affidavit on its face presents colorable support for a

IN RE: JAMES EARL RAY

F.D.D. NO. 75-13

THE UNITED STATES

April 12, 1975

GARRETT, J. As suggested by government counsel in the memorandum filed April 7, the court has followed the procedure set forth in Shaw v. Gibson, O.A. No. 75-260-S, 1 Cir. 1975, 520 F.2d 678. The court has examined in camera the affidavit supporting the search warrants and finds that it contains a colorable basis for the issuance of the warrants. The court has concluded that no necessary or productive purpose would be served by disclosing the contents of the affidavit to petitioner's counsel and directing the clerk to impose it. The court also finds, as stated by Judge Murray in Goodling v. United States, E.D.I. No. 75-02, that any prejudice to the plaintiff by delayed return to him of the property he seeks is outweighed by the important governmental interest of using the property in connection with the pending grand jury investigation.

Accordingly, plaintiff's motion is denied and the proceedings are dismissed with the understanding that they may be renewed if the United States Attorney or representatives of the Department of Justice delay unduly in presenting their evidence relative to the seized property to the grand jury.

RECEIVED

APR 15 1975

U.S. DISTRICT COURT

(SIGNED) W. ARTHUR GARRETT, JR.

United States District Judge

131

EXHIBIT "C"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

APR 21 1977

AT ... CC ...
JOHN K. ADAMS, Clerk

UNITED STATES OF AMERICA :

- v - :

THE MERCHANT GROUP, INC. :

ORDER

TO: THE CLERK OF THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF NEW YORK

Application having been made before this Court by
Department of Justice Attorney Lloyd George Parry and,
after careful consideration of the facts and circumstances
recited therein, this Court has determined that it is in
the interests of justice to grant said application, therefore,

IT IS ORDERED that the Clerk of the United States
District Court for the Western District of New York be and
is hereby ordered to seal and hold under seal for a period
on less of 60 days as not necessary
of sixty days the applications and/or affidavits for the
following:

1. The search and seizure warrant issued by this
Court on April 13, 1977 for the premises known as The
Merchant Diamond Group, Inc., Suite 1629 Statler Hilton
Hotel, 107 Delaware Avenue, Buffalo, New York.

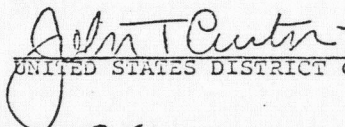
2. The search and seizure warrant issued by this
Court on April 13, 1977 for certain parcels deposited in
the United States Mail by The Merchant Diamond Group, Inc.

3. The search and seizure warrant issued by this
Court on April 14, 1977 for Safe Deposit Box #123, Statler
Hilton Office, Marine Midland Bank, Buffalo, New York.

4. The Order issued by this Court on April 14, 1977
freezing certain bank accounts maintained by The Merchant
Diamond Group, Inc. at the Marine Midland Bank.

5. The search and seizure warrant issued by the Honorable William G. Heffron, Erie County Court, dated April 15, 1977 for certain bank accounts and records pertaining to the Merchant Diamond Group, Inc.

IT IS FURTHER ORDERED that the said Clerk shall seal and hold under seal for a period of sixty days the said application made this date for this Order. It is provided, however, that notwithstanding the requirements of this Order for sealing of the said documents, Canadian and United States law enforcement authorities may retain and utilize working copies of the said documents for use in their investigations.


UNITED STATES DISTRICT COURT JUDGE
April 20 1977

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-VS- :

THE MERCHANT DIAMOND GROUP, INC. :

NOTICE OF MOTION

Misc. Crim. No. 214

SIRS:

PLEASE TAKE NOTICE, that upon the annexed Affidavit of WARREN S. RADLER, the undersigned will move before the Honorable John T. Curtin, a Judge of this Court, on the 25th day of April, 1977, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an Order permitting him to inspect, examine and make copies of any and all documents, affidavits, other materials and testimony constituting the application or applications for certain search warrants and Orders issued by this Court, and the County Court of Erie, State of New York, as more fully described herein, and for a further Order vacating the Order of this Court dated April 20, 1977, which Order, in effect, sealed all of such documents, affidavits, other materials and testimony, and for such other and further relief as to this Court may seem just and proper.

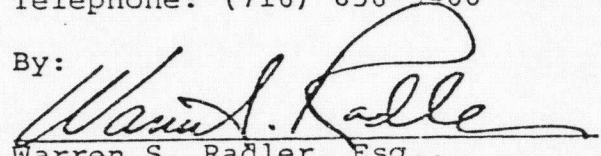
Dated: Buffalo, New York
April 22, 1977

SAPERSTON, DAY
& RADLER
Liberty Bank Building
Buffalo, New York 14202

Yours, etc.,

SAPERSTON, DAY & RADLER
Attorneys for the Defendant
Office and Post Office Address
1500 Liberty Bank Building
Buffalo, New York 14202
Telephone: (716) 856-5400

By:


Warren S. Radler, Esq.,
A Member of the Firm

TO: RICHARD J. ARCARA, ESQ.,
United States Attorney for the
Western District of New York
United States Courthouse
Buffalo, New York 14202

LLOYD GEORGE PARRY, ESQ.,
Attorney, United States
Department of Justice
Genesee Building
Buffalo, New York 14202

SAPERSTON, DAY
& RADLER
Liberty Bank Building
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-vs- :

THE MERCHANT DIAMOND GROUP, INC. :

AFFIDAVIT

Misc. Crim. No. 214

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

WARREN S. RADLER, being duly sworn, deposes and says:

1. I am an attorney at law and a member of the firm of SAPERSTON, DAY & RADLER, attorneys for the Defendant in this action. I am a member of the bar of this Court. I make this application on behalf of Defendant for an Order permitting the inspection, examination and copying of any and all documents, affidavits, other materials and testimony constituting the application or applications for certain search warrants and Orders issued by this Court and the County Court of Erie, State of New York, as more fully described herein, and for a further Order vacating the Order of this Court dated April 20, 1977, which Order, in effect, sealed all of such documents, affidavits, other materials and testimony.

The relevant facts supporting this application are
as follows:

2. Defendant is a corporation duly licensed to trans-act business in the State of New York and is in the business of selling high quality diamonds. In furtherance of its business, Defendant maintains an office at Suite 1627 Statler Hilton Hotel, 107 Delaware Avenue, Buffalo, New York, and a safe deposit box and bank accounts in the Marine Midland Bank, Statler Hilton branch. Upon information and belief, Defendant's business is a legitimate business enterprise carried on openly. Defendant is a member of the Buffalo Area Chamber of Commerce, the Better Business Bureau of Buffalo, and is listed with Dun & Bradstreet Canada Ltd. I am advised by Defendant that its business operations have been at all times within the purview of the laws of the State of New York and the United States of America.

Defendant's business in New York involves assets in excess of \$300,000.

3. On April 13, 1977 this Court issued a search and seizure warrant for Defendant's premises at 1629 Statler Hilton Hotel, directed to any authorized federal special agent, inspector or investigator which warrant commanded such agents to search for and seize certain items specifically mentioned therein, including all business, personnel and financial records, customers lists, customer payments, records of mailings, corporate and business documents, merchandise on hand, promotional literature and other documents and items. A copy of said search warrant is attached as Exhibit "A".

4. On April 13, 1977, upon information and belief, this Court issued a search and seizure warrant authorizing the Postmaster of Buffalo, New York and any United States Postal Inspector to seize and detain any and all packages containing diamonds delivered to the Niagara Square Postal Station. On the same date, this Court issued an Order authorizing said Postmaster and United States Postal Inspector to seize and detain any and all packages described as containing diamonds which are delivered to the Niagara Square Postal Station on or about April 13, 1977 by agents or employees of Defendant. A copy of said Order is attached hereto as Exhibit "B".

5. On April 14, 1977, this Court issued a search and seizure warrant directed to any authorized federal agent and directed to Safe Deposit Box #123, Statler Hilton Office, Marine Midland Bank, Buffalo, New York, which warrant commanded such agent to search for and seize certain property, namely, diamonds and other property relating to Defendant. A copy of said search and seizure warrant is attached hereto as Exhibit "C".

6. Upon information and belief, this Court issued an Order or or about April 14, 1977 freezing certain bank accounts maintained by Defendant at the Marine Midland Bank, Statler Hilton Office.

7. On or about April 15, 1977, a search and seizure warrant was issued by the Honorable William G. Heffron, Erie County Court, relative to certain bank accounts and records of Defendant, and an Order was issued by the County Court of Erie dated April 15, 1977 authorizing any United States Postal Inspector to enter the premises of the Marine Midland Bank Statler Hilton branch, and obtain the statements of balances on account of Defendant and others, records and documents relating to said accounts, rental agreements, records of entry and other records relating to Defendant. Said Order authorized the postal inspector to seize such documents, items, information and the assets of said accounts. A copy of said Order is attached hereto as Exhibit "D".

8. Upon information and belief, these warrants and Orders were all executed on the 13th, 14th and 15th days of April, 1977.

9. As a consequence of the execution of these Orders and search warrants, important items of personal property belonging to Defendant, its customers, suppliers and others were seized, including monies, checks, diamonds, personal property, records and documents. Upon information and belief, the value of the assets thus seized exceeds \$300,000.

10. I have been informed by Defendant that none of the items seized are contraband or in any way evidence of criminal activity. I have further been informed by Defendant that Defendant is in no way engaged in any criminal activity and therefore no probable cause could have existed for the issuance of the aforesaid warrants or Orders. I respectfully submit that the seizure of these items is illegal and in violation of the laws of the State of New York and the United States of America.

11. On April 20, 1977, this Court issued an Order sealing the applications and affidavits supporting the aforesaid search and seizure warrants and Orders.

12. The effect of the seizure of Defendant's property and this Court's Orders has been to effectively put Defendant out of business without due process of law. No arrests of Defendant or its employees have been made nor any indictments returned. The continued seizure of these assets will work untold hardship upon Defendant and its employees.

13. Rule 14(e) of the Federal Rules of Criminal Procedure provides:

"A person aggrieved by an unlawful search and seizure may move the District Court for the district in which the property was seized for

the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized."

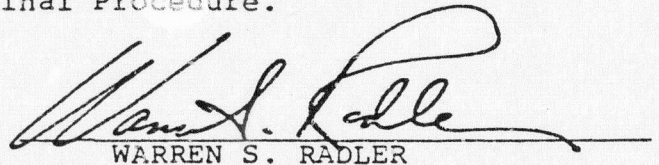
Deponent desires to move for an Order pursuant to Rule 14(e) for the return of the seized property. Obviously, the legality of such seizure and the underlying materials upon which search warrants and Orders have been issued is critical to such a motion. It is hornbook law that a person who wishes to challenge the validity of a search warrant must have access to the affidavits and material upon which the warrant was issued.

14. To determine the validity of the warrants and to completely explore all issues germane to a motion pursuant to Rule 14(e), it is necessary for deponent to examine, inspect and make copies of any and all documents, affidavits, other materials and testimony which comprise the underlying application or applications for such warrants and Orders.

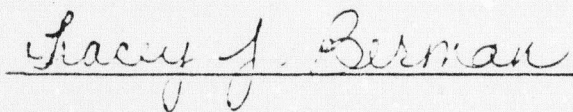
15. This Court's Order of April 20, 1977 precludes Defendant from examining the materials upon which the search warrants and Orders authorizing search and seizure were issued. In order to properly proceed under Rule 14(e), such applications, affidavits and other materials are essential.

WHEREFORE, it is respectfully requested that this Court issue an Order permitting Defendant to inspect, examine

and make copies of any and all documents, affidavits, other materials and testimony constituting the application or applications for certain search warrants and Orders issued by this Court, and the County Court of Erie County, State of New York, as more fully described herein, and for a further Order vacating the Order of this Court dated April 20, 1977, which Order, in effect, sealed all of such documents, affidavits, other materials and testimony, consistent with the rights guaranteed by the Constitution of the United State, the United States Statutes, and the Federal Rules of Criminal Procedure.


WARREN S. RADLER

Sworn to before me this
22nd day of April, 1977.



TRACEY J. BERMAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1978

United States District Court

FOR THE

UNITED STATES OF AMERICA

VS.

The Merchant Diamond Group, Inc.
Suite 1629 Statler Hilton Hotel
107 Delaware Avenue
Buffalo, NY 14202

FILED

APR 21 1977

Docket No.

AT O.C. M.
JOHN K. ADAMS, Clerk

Case No.

SEARCH WARRANT

To Any authorized federal Special Agent, Inspector or Investigator
Affidavit(s) having been made before me by Ronald L. Snyder, Postal Inspector

that he has reason to believe that ~~on the person of~~
on the premises known as

The Merchant Diamond Group, Inc., Suite 1629 Statler Hilton Hotel,
107 Delaware Avenue, Buffalo, New York 14202

in the Western District of New York

there is now being concealed certain property, namely

here describe property

Business, personnel and financial records; lists of customers' names and related records and correspondence; payments from customers and related banking records; telephone equipment and records of telephone billings and related matters; records of mailings; corporate and business documents; merchandise on hand; promotional literature, and other documents and items, all of which property relates to the operation and functioning of The Merchant Diamond Group, Inc. and the Merchant Diamond Group, Ltd. as described in the attached affidavit, which are evidence, fruits and instrumentalities of violations of 18, U.S.C., Sections, 1341, 1343 and 371.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of five days hence (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search in the daytime (6:00 a.m. to 10:00 p.m.) and if the property be found at any time in the day or night there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before this Court as required by law.

Federal judge or magistrate

Dated this 13 day of April

1077
John K. Adams
Judge (Federal or State Court of Record) or Federal Magistrate.

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

EXHIBIT "A"

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

(6)

FILED

APR 21 1977

AT... O.C. ...M.
JOHN K. ADAMS, Clerk

UNITED STATES OF AMERICA :
 :
-v- :
 :

MERCHANT DIAMOND GROUP, INC. :
_____ :

O R D E R

TO: THE POSTMASTER OF BUFFALO, NEW YORK and
ANY UNITED STATES POSTAL INSPECTOR:

AN APPLICATION having been made before this Court by Department of Justice Attorney Lloyd George Parry and Postal Inspector Ronald L. Snyder stating that they have probable cause to believe that the Merchant Diamond Group, Inc., Suite 1629, Statler Hilton Building, 107 Delaware Avenue, Buffalo, New York and certain of its officers, agents and employees are presently committing violations of Title 18, United States Code, Sections 371 (Conspiracy), 1341 (Mail Fraud) and 1343 (Wire Fraud), and that evidence and instrumentalities of the said violations in the form of packages containing diamonds will be delivered to the United States Post Office at Niagara Square, Buffalo, New York by agents or employees of the said Merchant Diamond Group on or about Wednesday, April 13, 1977;

AND, IT APPEARING to this Court, after careful consideration of the facts and circumstances related in the attached and incorporated Application and Affidavit, that there is probable cause to believe that the said violations have been, are being and will continue to be committed by the said

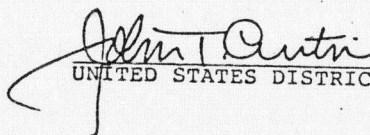
EXHIBIT "B"

Merchant Diamond Group, Inc. of Buffalo and others and that the said packages containing diamonds will be delivered as aforesaid and will then constitute evidence and instrumentalities of the said violations, and that the relief requested is necessary and appropriate in view of the investigative action planned in New York City and Toronto:

NOW, THEREFORE, IT IS ORDERED that the Postmaster of Buffalo, New York and any United States Postal Inspector be and are hereby authorized and commanded to seize and detain any and all packages described as containing diamonds which are delivered to the Niagara Square Postal Station on or about April 13, 1977 by agents or employees of the said Merchant Diamond Group, Inc.; and, upon seizing any such items, the said Postal Inspector shall retain the property safely in custody together with this Order, Application and Affidavit until such time as such other warrants are executed, or in any event within ten days of the date of this Order, whichever occurs first; thereafter making a prompt Return to this Court as otherwise required by law.

DATED: April 13, 1977

AT: Buffalo, New York


UNITED STATES DISTRICT JUDGE

United States District Court
FOR THE

FILED

APR 21 1977

WESTERN DISTRICT OF NEW YORK

AT O.C.
JOHN K. ADAMS, Clerk

UNITED STATES OF AMERICA

VS.

SAFE DEPOSIT BOX #123
STATLER HILTON OFFICE
MARINE MIDLAND BANK
BUFFALO, NEW YORK

Docket No.

Case No.

SEARCH WARRANT

To ANY AUTHORIZED FEDERAL AGENT

Affidavit(s) having been made before me by Special Agent Robert S. Brock,
United States Customs Service and Postal Inspector Ronald L. Snyder that they have
that he has reason to believe that ~~on the person of~~ on the premises known as

SAFE DEPOSIT BOX #123
STATLER HILTON OFFICE
MARINE MIDLAND BANK
BUFFALO, NEW YORK

in the Western District of New York.

there is now being concealed certain property, namely Diamonds and other property relating
to Merchant Diamond Group, Inc.
Suite 1629 Statler Hilton Hotel
107 Delaware Avenue
Buffalo, New York

which are evidence and instrumentalities of violations of 18 U.S.C. §§1341, 1343
and 371.

and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the person or premises above described and that grounds for application for issuance of the
search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of 5 days hence
(not to exceed 10 days) the person or place named for the property specified, serving this warrant
and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found
there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written
inventory of the property seized and promptly return this warrant and bring the property before
this Court as required by law.

Federal judge or magistrate

Dated this 14 day of April

1977

John T. Cuntz
Judge (Federal or State Court of Record) or Federal Magistrate.

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision
in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for rea-
sonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

EXHIBIT "C"

146

County Court of Erie
State of New York

FILED

APR 21 1977

AT _____ O'C _____ M.
JOHN K. ADAMS, Clerk

UNITED STATES OF AMERICA

-v-

MERCHANT DIAMOND GROUP INC.

ORDER

TO: ANY UNITED STATES POSTAL INSPECTOR and
THE CHIEF EXECUTIVE OFFICER OF THE MARINE MIDLAND BANK

AN AFFIDAVIT having been made before this Court, pursuant to Rule 41 of the Federal Rules of Criminal Procedure, by Department of Justice Attorney Lloyd George Parry and United States Postal Inspector Ronald Snyder (the contents of which are incorporated herein); and this Court having made the following findings:

1. That there is no Federal Judicial Officer available in the City of Buffalo on this date;

2. That there are exigent circumstances requiring that the Government be afforded the relief sought in order to prevent the improper removal of evidence, fruits and instrumentalities of a crime;

3. That there is probable cause to believe that Merchant Diamond Group Inc. of Buffalo, New York and others have committed violations of 18 U.S.C. Sections 371 (Conspiracy), 1341 (Mail Fraud) and 1343 (Wire Fraud).

EXHIBIT "D"

4. That there is probable cause to believe that additional evidence, fruits and instrumentalities of the said violations in the form of checking accounts, savings accounts, and safety deposit boxes and records relating thereto are presently located at the Marine Midland Bank, 107 Delaware Avenue, Buffalo, New York:

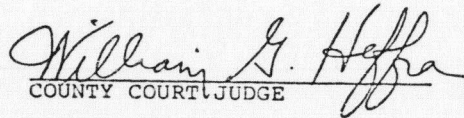
NOW, THEREFORE, IT IS ORDERED that any United States Postal Inspector be and is hereby authorized and commanded to enter upon the premises of the said Marine Midland Bank, Statler Hilton Branch, 107 Delaware Avenue, Buffalo, New York and there to obtain, in the least disruptive manner possible and with appropriate assistance of bank personnel, the following documents, items and information which are fruits, instrumentalities or evidence of the violations specified herein:

(1) The statements of balances on accounts No. 756-75037-7 and 756-75044-0 for April 12, 13, 14 and 15, 1977 together with any deposit and withdrawal orders for those accounts for those dates, whether or not honored; (2) The identity of any other checking or savings accounts or accounts of any kind in the names of Merchant Diamond Group Inc., Merchant Diamond Group Limited, Harold Eric Smith, Gerald Doren or Lawrance Jaffey; (3) Records and documents relating to any and all of the said accounts, as well as (4) The rental agreements, records of entry, and records and documents of any kind relating to any safety deposit boxes rented by those corporations or individuals, whether or not by a different name known to the said bank; and the said Postal Inspector is further authorized and commanded to seize any such documents, items, and information as well as the assets of any accounts presently known or discovered pursuant to this Order.

PROVIDED, that this Order and Application shall remain sealed pending action by the Federal District Court, and that a Return shall be made to Chief Judge John T. Curtin on the first working day that he is in the City of Buffalo. And further provided that this Order shall be executed forthwith in the daytime.

DATED: April 15, 1977

AT: Buffalo, New York


COUNTY COURT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

Misc. Crim. No. 77-214

THE MERCHANT DIAMOND GROUP, INC.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION FOR INSPECTION OF DOCUMENTS

This memorandum of law is submitted in support of THE MERCHANT DIAMOND GROUP, INC.'s motion for an order permitting counsel to inspect, examine and make copies of any and all documents, affidavits, other materials and testimony constituting the application for certain search warrants issued by this Court and County Court Judge William G. Heffron, and for a further order of this Court vacating the sealing of these previously referred to documents.

It cannot be disputed that THE MERCHANT DIAMOND GROUP, INC., is a "person aggrieved" by the searches and seizures which were conducted by the Government pursuant to the search warrant previously issued by this Court and by County Court Judge William G. Heffron. As such an aggrieved person, THE MERCHANT DIAMOND GROUP, INC., is entitled to move for the return of its property seized by the Government pursuant to these warrants. However, in order for THE MERCHANT DIAMOND GROUP, INC. to avail itself of this

Rule 41 motion for the return of property, it must have access to the affidavits and other documents which form the underlying application for the warrants in question so that it might review them and determine whether or not the requisite showing of probable cause was made and whether any of its constitutional rights were violated.

At the present time, however, THE MERCHANT DIAMOND GROUP, INC., is completely unable to avail itself of Rule 41(e) and it is being deprived of its constitutional right to due process of law to contest the seizure of its property.

There is simply no Rule contained in the Federal Rules of Criminal Procedure which grants a District Court the authority to seal affidavits as it has done in the instant case. 18 U.S.C. §2515 does allow a court to withhold access to affidavits used to obtain wire-tape orders, for a limited period of time, but that authority to seal is expressly set forth in that statute and expressly limited to wire-tape situations. There is no rule which would allow for the sealing of affidavits as in the instant case.

Finally, it should be pointed out that THE MERCHANT DIAMOND GROUP, INC. has been essentially put out of business by the seizure of all of its assets in the United States. It is suffering irreparable harm and there does not appear to be any entity which would be capable of making THE MERCHANT DIAMOND GROUP, INC. whole. Certainly, the United States Government

will not reimburse THE MERCHANT DIAMOND GROUP, INC. for its lost profits if it is determined that the warrants were illegal and improper. It is, therefore, of the utmost importance that THE MERCHANT DIAMOND GROUP, INC. be allowed the opportunity to contest the seizure and to protect its business.

In closing, it should also be noted that Rule 41(g) requires that the Federal Magistrate, before whom a warrant is returned, to file all of the papers with the Clerk of the District Court. No provision is made for any sealing of those papers. It is, therefore, respectfully requested that this Court unseal the papers.

Respectfully submitted,

SAPERSTON, DAY & RADLER

By: *Brian P. Fitzgerald*

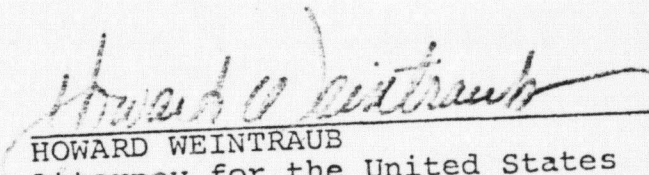
BRIAN P. FITZGERALD, ESQ.

Attorneys for Defendant
Office & P. O. Address
1500 Liberty Bank Building
Buffalo, New York 14202
716-856-5400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of September
1977, a copy of the foregoing Brief and Appendix were served by
mail on the following:

Warren S. Radler, Esquire
Saperston, Day & Radler
Liberty Bank Building
Buffalo, New York 14202


HOWARD WEINTRAUB
Attorney for the United States
Appellate Section
Criminal Division
Department of Justice
Washington, D.C. 20530